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ABSTRACT

The competing demands of the workplace and the home have intensified over the last 25 years as the nation has experienced dramatic social and economic changes affecting businesses, employees, and families. In 1993, Congress passed the Family and Medical Leave Act (FMLA) to provide a national policy that supports families in their efforts to strike a balance between the demands of home and work. This report from the Department of Labor's Commission on Leave provides an initial assessment of family and medical leave policies in general and of the FMLA in particular. The report includes a discussion and analysis of the pertinent research, including a review of the literature, two commissioned surveys, a number of smaller studies, and three public hearings on family and medical leave. The findings indicate that the FMLA has had a positive impact on employees overall. The legislation has succeeded in replacing the piecemeal nature of voluntary employer leave policies and state leave statutes with more consistent and uniform standards. The findings also indicate that the FMLA has not been the burden to business that some had feared. For most employers, compliance is easy, the costs are nonexistent or small, and the effects are minimal. The findings indicate that most periods of leave are short, most employees return to work, and reduced turnover seems to be a tangible positive effect. Findings suggest that the FMLA is a significant step in helping a larger cross-section of working Americans meet their medical and family caregiving needs while still maintaining their jobs and economic security. The report concludes with seven appendices, including a fact sheet on the FMLA, commissioner biographies, commission activities, additional views of commissioners, tables, information on the surveys, and a 98-item bibliography. (SD)

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A Workable Balance:

Report to Congress on Family and Medical Leave Policies

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MY FAMILY
MOMMY
Me
BRITHR
DADDY

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Commission on Leave

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Report designed by Angelique Larsen.

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A Workable Balance:

Report to Congress on Family and Medical Leave Policies

MY FAMILY
MOMMY
Me
BRITHR
DADDY

Commission on Leave

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The Honorable Christopher J. Dodd, Chairman
U.S. Senator
Connecticut

The Honorable Donna R. Lenhoff, Vice Chair
General Counsel and Director of Work and Family Programs
Women's Legal Defense Fund

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Ann Bookman
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ANN BOOKMAN
EXECUTIVE DIRECTOR

April 30, 1996

The Honorable Nancy Landon Kassebaum
Chairman
The Honorable Edward M. Kennedy
Ranking Minority Member
Committee on Labor and Human Resources
United States Senate
Washington, D.C. 20510-6300

The Honorable William F. Goodling
Chairman
The Honorable William L. Clay
Ranking Minority Member
Committee on Economic and Educational
Opportunities United States House of
Representatives Washington, D.C. 20515-6100

Dear Chairman Kassebaum, Senator Kennedy,
Chairman Goodling and Representative Clay:

On behalf of the Commission on Family and Medical Leave, I am pleased to transmit to you "A Workable Balance: Report to Congress on Family and Medical Leave Policies," the final report of the Commission.

As you know, the Commission was created with the enactment of the Family and Medical Leave Act of 1993 and was charged with examining the impact of this new law and other family and medical leave policies on workers and employers across the country. Our membership was diverse and divided on the enactment of the FMLA itself. But since its first meeting in November 1993, the Commission pursued its statutory mission in a cooperative, thoughtful and comprehensive way.

The Commission undertook two major research surveys that provide us with the very first statistically valid and reliable information on the national impact of these policies on businesses and employees. In addition, we held hearings across the country and heard from a diverse group of businesses, employees and their representatives about their experiences with the new law and other family-friendly policies. Finally, the Commission and the National Academy of Sciences convened a workshop with the nation's foremost experts to review the findings of our research and what they meant for America's workers and employers.

This report is good news for America's families and businesses. The Family and Medical Leave Act is working for millions of workers and their families. The research shows it has clearly become an important tool in the effort to balance the demands of family and work. Fully two-thirds of covered employers have expanded their policies to come into compliance with the FMLA. And workers have not been the only ones to benefit. The great majority of companies reported no or only minor new costs, and this in the period in which they had to implement the FMLA. Beyond reporting few problems, some businesses also indicated they have seen a positive benefit from these policies in increased productivity and lower worker turnover.

As chairman of the Commission, I am honored to present our final report to you and hope that you find it a valuable source of information on the impact of family and medical leave policies.

Sincerely,

Chris Dodd

CHRISTOPHER J. DODD
Chairman
Commission on Leave

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

April 30, 1996

The Honorable Nancy Landon Kassebaum
Chairman
The Honorable Edward M. Kennedy
Ranking Minority Member
Committee on Labor and Human Resources
United States Senate
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The Honorable William F. Goodling
Chairman
The Honorable William L. Clay
Ranking Minority Member
Committee on Economic and Educational Opportunities
United States House of Representatives
Washington, DC 20510-6100

Dear Chairman Kassebaum, Senator Kennedy, Chairman Goodling and Representative Clay:

The Department of Labor joins with the bipartisan Commission on Leave in the release of "A *Workable Balance: Report to Congress on Family and Medical Leave Policies*." This report is the culmination of the Commission's two-year effort to evaluate the effects of the Family and Medical Leave Act (FMLA).

The FMLA, signed into law by President Clinton in 1993, is intended to help Americans balance their work and family responsibilities in an era when most households are headed either by two working parents or by single mothers. The signature features of the Act require businesses with more than 50 employees to allow up to 12 weeks of unpaid leave to care for a new born or adopted child, to attend to their own serious health needs, or to care for an ill parent, child or spouse. The FMLA also established the Commission on Leave and gave it the mission of assessing the new law's impact on workers, families and employers.

The enclosed report shows that the FMLA is of great benefit to a large number of working Americans while imposing minimal burdens on employers. Fewer workers will have to choose between their jobs and their loved ones if a child or parent should need care. For their part, most businesses find that the new law is easy to administer and costs are small. The majority of leaves are short in duration and most workers return to their jobs. In fact, some businesses have reported reduced employee turnover, enhanced employee productivity and improved morale which they attribute to the FMLA. The Family and Medical Leave Act is good for families and good for business.

The Commission members and staff are to be commended for their dedication and hard work in the preparation of this report — a process that included systematic review of existing data on family and medical leave policies, two national surveys to gauge the effects of the FMLA on workers and employers, and three public hearings. In particular, we owe a great debt of gratitude to the Commission's chair, Senator Christopher Dodd, who has been a leader on the FMLA for many years — long before it became law. Our thanks also to Senator Larry Craig, Congresswoman Patricia Schroeder, Congressman Steve Gunderson, and the representatives of business, labor, working women and their families for their contributions and service to the commission. And we are deeply grateful to the three successive executive directors who gave such outstanding service to the Commission — Irasema Garza, Susan King and Ann Bookman.

Thanks to the work of the Commission on Leave, we can be sure that the FMLA is an effective response to the changing demographics of the American workplace. The Act has succeeded in bringing many Americans a benefit that was once afforded to a fortunate few — the knowledge that they can return to their jobs and keep their health benefits if they need unpaid time off to meet medical or family needs. The FMLA is helping Americans achieve the workable balance they have long sought.

Sincerely,

Robert B. Reich

Robert B. Reich
Secretary of Labor

ACKNOWLEDGEMENTS

The Commission on Leave wishes to thank many individuals and organizations for their part in making this report possible. Woven from multiple threads, this report is a work of the mind and of the heart: some contributed scientific expertise and data; others contributed very personal and sometimes painful family stories. Through the efforts of many people from diverse perspectives, who willingly gave of their time and experience, we have created a document which explores how a new public policy is affecting the lives and livelihoods of many Americans.

First, the Commission would like to thank the many people who came forward through the public hearing process to share with the Commissioners their own view of how the Family and Medical Leave Act has affected their family or business. Their voices and testimony are an important component of this report.

The Commission wishes to acknowledge the dedication and professionalism of the two organizations that conducted the Commission's scientific research. We want to thank David Cantor of Westat, Inc., not only for guiding the development and completion of the Employer Survey, but also for his continuing interest and contributions to this report. And our appreciation goes to Kerry Levin, Jeffery Kerwin, Susan Heltemes and David Becher of Westat for their efforts on the Employer Survey. We also want to thank Robert M. Groves and Katherine A. McGonagle of the Institute for Social Research, Survey Research Center at the University of Michigan for their significant contributions in the development and completion of the Employee Survey, and express our gratitude to their colleagues Judith Connor, Stephen Heeringa and Patricia Veerkamp for their work as well.

There are a number of government agencies and other organizations that responded with generosity and enthusiasm when asked to contribute data and information to the Commission on Leave. We especially wish to thank Maria Echaveste and her staff at the Wage and Hour Division of the Department of Labor; Jane Malloy of the Department of Commerce and Ruth Runyan at the Census Bureau; Ellen Galinsky and James T. Bond of the Families and Work Institute; Sheila Wellington and Marcia Brumit Kropf of Catalyst; Paula Rayman and Francoise Carre of the Radcliffe Public Policy Institute; John Abraham of the American Federation of Teachers; and Stan Wisniewski of the National Education Association. And a special note of appreciation goes to Deborah Phillips, Director of the Board on Children and Families at the National Academy of Sciences, who graciously hosted a workshop to assist the Commission in analyzing the data from the Employer and Employee Surveys at a critical point in the development of this report.

This report could not have been completed without the efforts of many hard working staff members, each of whom played an important part in different phases of the Commission's work. The Commission's first Executive Director, Irasema Garza, and Hermelinda Pompa who served as Acting Executive Director after her, effectively laid the foundation for the

Commission's work: assessing existing data sources and linking the Commission to multiple resources and researchers. Susan King, the Commission's second Executive Director, brought dynamic leadership and energy to the launching of two national surveys and the organizing of three public hearings. She was ably assisted in these tasks by Diane Quinn, Linda Paris, Jean Coyle, and Kathleen Denny. Finally Ann Bookman, the Commission's third Executive Director, provided invaluable research guidance to the Commission throughout its life, and skillfully led the preparation and writing of this report.

Essential to the background research, analysis and writing in this report were the talents and tireless efforts of Kirsta Millar, Miriam Szapiro and Kirsten Wever - the Commission is most grateful to each of them. Administrative support from Rebecca Griffin, Stacey Oliphant, Tracy Reed and Lynette Shelton have greatly aided the day to day work of the Commission. The Commission also thanks Angelique Larsen, Carrie Cyphert, Gail Blachly, Sarah Varela, Gretchen Wright, Lisa Lederer, Jim Blackmon, Lionel White and Howard Waddell for their creativity and careful attention to detail in the design, graphics production, and copy editing process.

The Commission also wishes to acknowledge the special contributions made by members of its own bipartisan Technical Task Force. The extra effort, long hours and genuine committment of Commission Vice Chair Donna Lenhoff, Commissioner Mary Tavenner, Suzanne Day representing Commission Chair Dodd, and Damon Tobias representing Commissioner Craig, added immeasurably to the Commission's research efforts and the completion of this report.

A final word of appreciation to the U.S. Department of Labor which provided significant resources and technical support to the Commission's work all along the way. Two agencies in particular have made this report a reality: first, thanks are due to the Women's Bureau which, under the leadership of Karen Nussbaum, housed the Commission and wholeheartedly supported its work in countless ways; second, a debt of gratitude goes to the Bureau of Labor Statistics, and especially to Clyde Tucker who has contributed enormously to the rigor of the Commission's research and the quality of this final report.

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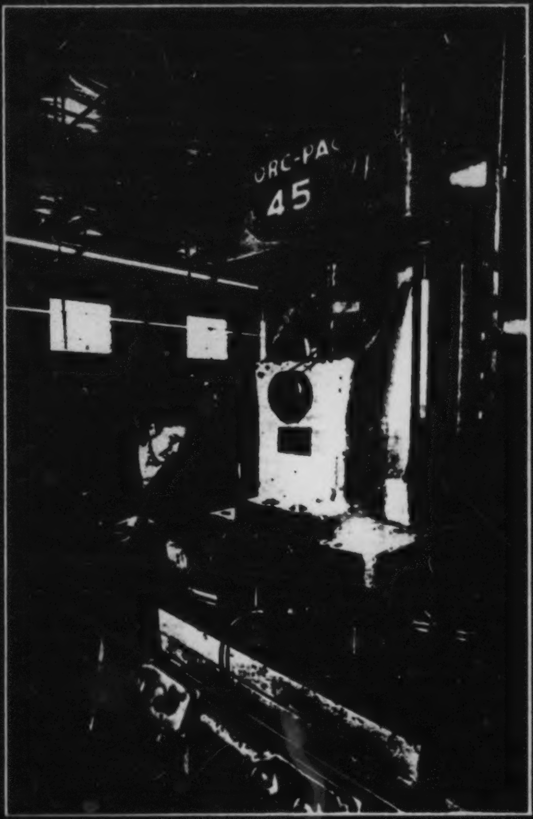
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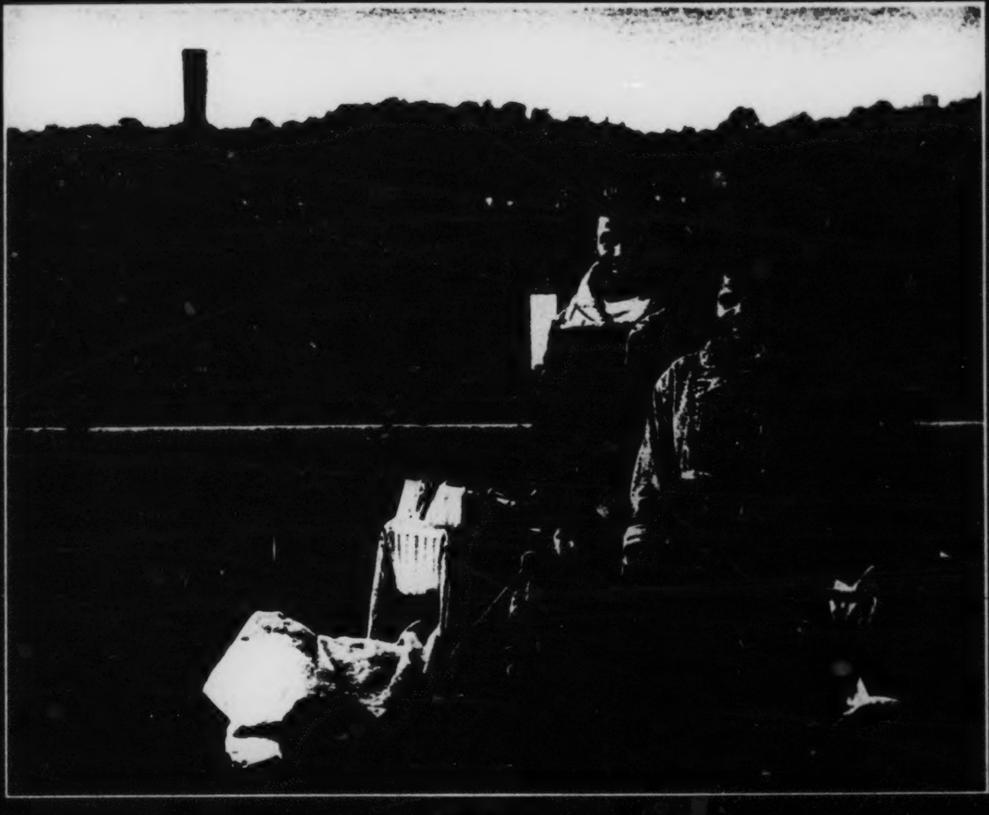

Executive Summary

Families and Employers in a Changing Economy

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State statutes, enacted in 34 states, Puerto Rico and Washington, D.C., expanded unpaid, job-guaranteed leave options for some employees, especially in the area of maternity leave, but very few were as comprehensive as the FMLA. The amount of job-guaranteed leave that a worker could take varied widely in state law - from 16 hours to one year. Eligibility requirements also varied, and many of the laws applied only to state employees. Most of the laws exempted certain small businesses. Five states and Puerto Rico also have Temporary Disability Insurance laws (TDI) which pre-date FMLA and provide partial wage replacement during maternity-disability leave as well as other temporary disabilities.

Today, many more employers are providing family and medical leave policies through their compliance with the new law, which requires employers with 50 employees or more to provide up to 12 weeks of unpaid, job-protected leave a year to eligible employees to care for a newborn, newly-adopted or foster child, a child, spouse or parent with a serious health condition, or for the serious health condition of the employee, including maternity-related disability. Employees are eligible to take leave if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous 12 months, and if there are at least 50 employees working for their employer within a 75-mile radius of their worksite.

This report provides an initial assessment of family and medical leave policies in general, and of FMLA in particular: are we approaching the workable balance envisioned by this nation's lawmakers?

How the Commission Went About its Work

The Commission on Leave, which commenced in November 1993, was composed of members who possessed the expertise and practical experience needed to evaluate family and medical leave issues. They included Congressional leaders, representatives of women and families, labor and the business community, including small businesses and ex-officio Cabinet members from Federal agencies with direct interest in family and medical leave issues. Following its formation, the Commission set about to meet a broad and ambitious legislative mandate by coordinating a variety of research and information gathering efforts that together help to provide comprehensive answers to all the questions posed by Congress.

The FMLA charges the Commission to study the following points: existing and proposed mandatory and voluntary family and medical leave policies of both covered and non-covered employers; their costs, benefits and impact on productivity; the possible differences to employers in costs, benefits and impact on productivity, job creation and business growth based on size; the impact of family and medical leave policies on the availability of benefits provided by covered and non-covered employers; state enforcement of the FMLA with regard to special provisions pertaining to teachers; methods used by employers to reduce administrative costs of policies; the ability of employers to recover health insurance costs from employees who do not return to work; and the impact on employers and employees of temporary wage replacement policies.

The Commission, placing a high priority on hearing directly from businesses, employees and their families, held three public hearings in different sites across the country. A broad cross-section of people testified and provided important insights on a wide variety of topics related to family and medical leave.

In FY '95, the Commission, through the Bureau of Labor Statistics, contracted with two research organizations, Westat, Inc. and the Institute for Social Research, Survey Research Center at the University of Michigan, to conduct two major studies - an Employer Survey and an Employee Survey. The Employer Survey, a national, random sample survey, provides the first post-FMLA statistically valid data on private-sector employers of diverse sizes assessing their experience with the Family and Medical Leave Act, as well as with family and medical leave policies in general. The Employee Survey is the first ever national, random sample survey on employee leave-taking. The data, collected in 1995 and based on an 18-month period commencing in January, 1994, provide important national estimates on the need for and occurrence of taking leave from work for family and medical reasons. In addition, the Commission requested several smaller studies to assist in answering the questions posed by Congress (see Chapter II).

Major Research Findings

The following data are based on results of the two nationally representative, random sample surveys described above.

A. Family and Medical Leave Policies Today

1. Coverage under FMLA

Approximately two-thirds (66.1 percent) of the U.S. labor force, including private and public-sector employees, work for employers covered by the FMLA. Slightly more than half (54.9 percent) of U.S. workers (and 46.5 percent of private-sector workers) also meet the FMLA's length of service and hours-related eligibility requirements.

Only one-tenth (10.8 percent) of private-sector U.S. worksites are covered by the FMLA, but this relatively small proportion actually employs over half (59.5 percent) of the nation's private-sector employees. Industries with the largest worksites, such as manufacturing, also have a large number of eligible employees working in a relatively small percentage of worksites. All public-sector employers are covered by the FMLA without regard to the number of employees at a given worksite.

2. Overview of Employer Leave Practices

The FMLA has had a significant impact on covered employers' leave practices and especially on formal leave policies. Two-thirds of covered worksites have changed some aspect of their policies in order to comply with the Act. The most common change was to increase the reasons for which employees can take leave. For example, 69.3 percent of covered worksites changed their policies to provide leave for fathers to care for seriously ill or newborn children.

There is a significant difference between the family and medical leave policies provided by worksites that are and are not covered by the FMLA. Over 90 percent of covered worksites now provide up to 12 weeks of leave for family and medical reasons, whereas among non-covered worksites only 32.3 percent offer parental leave and only 41.7 percent offer leave to care for a seriously ill child, spouse or parent. Between 95 and 99 percent of covered worksites provide the different types of leave provided by the FMLA with a job guarantee, while 84 to 87 percent of non-covered worksites which offer leave provide a job guarantee with family and medical leave.

3. Knowledge of the FMLA

The great majority of covered employers (86.5 percent) know they are covered by the FMLA. However, only 58.2 percent of employees working at covered worksites have heard of the Act. Some groups of employees - salaried, union members and those with higher educations - are more likely to know about the FMLA than are others. Employees from all demographic groups are most likely to hear about the FMLA through the media, but those in higher-paying jobs are comparatively more likely to learn about the Act from their employers.

B. Employer Impact: Costs and Benefits of the FMLA

1. Ease of Administration

Most covered employers find it relatively easy to administer the FMLA. The vast majority of worksites (over 90 percent) find it "very" or "somewhat easy" to determine whether the Act applies to them and to determine employee eligibility. A significant majority also find other administrative responsibilities - additional recordkeeping, coordination with state and federal leave laws and other federal laws - to be no trouble. Larger worksites find it somewhat more difficult to administer the FMLA than do smaller covered worksites. Unlike other administrative activities, management of intermittent leave presents an administrative difficulty for a significant minority of worksites (39.2 percent), but it represents a small proportion of leave-taking overall (11.5 percent).

2. Costs and Cost-savings

For the great majority of worksites, compliance with the FMLA entails no costs or only small costs. Between 89.2 and 98.5 percent of covered worksites report no costs or small costs in each of four broad areas: general administrative costs; the cost of continuing health benefits; costs associated with hiring and training replacements for leave-taking employees; and "other" costs. Again, larger employers are most likely to experience an increase in costs. This, in part, is due to the fact that they are more likely to have leave-takers and to have larger numbers of leave-takers. One large employer cited increased costs as the "unintended adverse consequences" resulting from implementation of the Act. However, only 1.3 percent of employers report that they reduced benefits to offset costs associated with the FMLA, giving further evidence that costs overall are minimal.

Very few covered worksites report cost savings resulting from the FMLA (2.5 percent). Interestingly though, the larger worksites (250 employees or more) that are more likely to incur costs from the Act, also report slightly more cost savings (7.5 percent) than covered worksites as a whole. Some employers who testified at the Commission's public hearings report cost savings, particularly from reduced employee turnover. They also paint an overall picture of enhanced employee productivity, goodwill and willingness to "go the extra mile" resulting from employees' ability to take leave.

3.The FMLA's Effects on Business and Employee Performance

Most worksites report that the FMLA has no noticeable effect on business performance. Between 86.4 and 95.8 percent report no noticeable effect on productivity, profitability and growth. To the extent that employers do report an effect, it is as likely to be positive as negative on business productivity and growth, and more likely to be negative regarding profitability.

Most employers also find that the FMLA has no noticeable effect on employee performance. There are significant positive effects in the areas of employee career advancement and employee productivity. And it is noteworthy, in light of the Act's goals, that a third of employers note a positive effect on employees' ability to care for family members, and this number doubles for larger worksites.

4. Expectations of the Non-Covered

Small covered worksites[1] have relatively benign experiences with the FMLA, reporting low costs and minimal effects on business and employee performance. Their positive experiences contrast sharply with the negative expectations voiced by many small non-covered sites. For example, between 8.2 percent and 15 percent of non-covered sites expect negative effects on employees' ability to care for family members, career advancement and turnover, while less than one percent of covered sites experience negative effects in these areas. The expectations of non-covered employers are far more pessimistic than the experiences of covered sites in general, and of the small covered sites in particular.

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[1] These worksites have fewer than 50 employees, but are considered "covered" because of the 75-mile radius rule

C. The Employee Experience

1. Employees' Need for Leave and Utilization of the FMLA

About one-fifth of U.S. workers have a need for some form of leave covered under the FMLA. The Employee Survey found that 16.8 percent of employees took leave for a reason covered by the FMLA, and 3.4 percent of employees needed but did not take leave. In addition, about 40 percent of all employees think they will need to take leave for an FMLA reason at some time within the next five years. The reason most frequently cited for future leave is care of a seriously ill parent. More than two-thirds (70.9 percent) of employees agree that "every employee should be able to have up to 12 weeks of unpaid leave in a year from work for family and medical problems."

Thus far, the rate of leave use designated by employees as FMLA leave is fairly low. As reported in the Employee Survey, among the 16.8 percent of employees who have taken some type of family and medical leave, about seven percent of that group designate their leave as "FMLA leave" (about 1.2 percent of all employees). Given that 55 of every 100 employed persons both work at a covered worksite and are eligible to take leave under the Act, the FMLA utilization rate among these employees is about two percent.[2] The Employer Survey of private-sector covered worksites found a slightly higher estimate of FMLA utilization (3.6 percent). Given the statistical variability in these two estimates, the number of employees who took FMLA leave in the period of both surveys ranges between one-and-a-half million to just over three million.

A significant minority of employees (3.4 percent) - "leave-needers" - have expressed a need for leave that as yet remains unmet. Among employees who need but do not take leave, fully 63.9 percent cannot afford the accompanying loss of wages, underscoring the importance of wage replacement. Hourly workers, African Americans and employees with some college education are most likely to be among those employees who need, but do not take leave.

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[2] This is a conservative estimate. See discussion in Chapter IV.

2. Employees' Experiences with Leave

Employees described in this section include all leave-takers, both those working at covered and non-covered worksites, who take leave for a reason covered under the FMLA. Only a portion of these employees (seven percent) designated the leave that they took as "FMLA leave."

a. The leave-takers

Leave-takers are as diverse as the American workforce. The demographic profile of leave-takers generally resembles that of the overall employee population, with some noteworthy distinctions. Employees aged 25 to 34 years are proportionately more likely than younger or older employees to take leave. Employees between 35 and 49 years of age (the "sandwich generation"), are numerically the largest group of leave-takers. Employees with one or more children, hourly employees and employees with family incomes of $20,000 to $30,000 per year are more likely to take leave than are employees with higher family incomes.

b. Employees' reasons for leave

Family leave to care for a seriously ill child, spouse or parent and medical leave for one's own health together account for almost 80 percent of all leave. About 59 percent of employees of all ages take leave because of their own serious health problems (exclusive of women who take maternity-disability leave). About a quarter of leave is taken by relatively young parents to care for their children at birth, adoption or during a serious illness. A further ten percent of leave is taken by somewhat older employees to care for ill parents or spouses.

In general, men take more leave for their own serious health condition. Women (who alone take maternity leave) are somewhat more likely than men to need leave, to take leave and to take longer periods of leave. Men, however, take comparable amounts of parental leave and are slightly more likely to take leave to care for an ill spouse than women (some of this may be taking care of wives before or after childbirth).

c. Lengths of leave

Most periods of leave are short. The great majority of all leave (almost 90 percent) falls within the 12-week limit established by the FMLA. While the length of leave tends to vary depending on the reason for the leave, the median length of leave for all leave-takers is ten days.

d. Methods used to cover the work of leave-taking employees

By far the most prevalent method that employers use to cover work is to assign it temporarily to other co-workers (67.5 percent). Employers are least likely, however, to use work reassignment to cover work among highly-educated, higher-income employees - often the hardest to replace. Employers are most likely to find permanent replacements to cover the work of the youngest leave-takers and those with the lowest family income. Many employers also hire temporary replacement workers to help cover the job duties of leave-takers.

e. Benefits, wage replacement and covering lost income during leave

The FMLA requires employers to continue health benefits during leave. Over 95 percent of covered employers report that they continue health benefits during FMLA leave, and three percent of leave-takers at covered and non-covered worksites report losing health benefits during leave. Although wage replacement is not required by the FMLA, a significant proportion of leave-takers receive full wage replacement (46.7 percent) or partial wage replacement (19.6 percent) during their leave period. This is most likely to be sick pay, vacation pay or pay from a disability insurance plan, benefits which pre-dated the FMLA. Wage replacement is more likely to be available to employees who work at covered worksites. Salaried employees, more highly educated employees, unionized employees, men and those with higher levels of household income are most likely to receive wage replacement; the employees least likely to receive wage replacement are the youngest and oldest employees, non-salaried workers and non-union workers. Also, employees who have never been married, those in the lowest income and education groups and Latino employees are most likely to be unpaid during leave.

Not surprisingly, then, employees who fare best in covering for lost income during leave-taking are employees with high family incomes, salaried employees, union members, highly educated employees and white employees. These employees are less likely than other leave-takers to borrow money, cut leave short or to go on public assistance. Women and employees with annual family incomes of less than $20,000 per year are more likely to need public assistance in order to deal with lost income. Nine percent of leave-takers overall use public assistance to supplement income during periods of leave, and 11.6 percent of women leave-takers use public assistance for this reason.

f. Returning to work

The vast majority of leave-takers (84 percent) return to their same employer while six percent do not, and ten percent remain on leave. Employees in low-wage jobs, including jobs with no wage replacement, are least likely to return to their same employer. Employees from households with incomes of less than $20,000 are far less likely to return to work; women and employees from non-covered worksites are also less likely to do so. Employees with high family income levels, unionized workers and salaried employees are more likely to return to their same employer.

3. Employees' assessment of their leave-taking experiences

Overall, employees' experiences with family and medical leave policies, including the FMLA, have been positive. The majority of employees who take family or medical leave find it relatively easy to arrange, have few concerns about the job-related consequences of taking leave and are relatively satisfied with the amount of leave they take.

To the extent that employees do have trouble arranging to take leave, express job-related concerns about taking leave or are dissatisfied with the amount of leave they take, they are more likely to work in non-covered worksites. Women, non-whites and non-salaried employees are particularly likely to report negative experiences on at least one of these measures. This finding is probably related to differences in wages and benefits among employees that existed in the labor market prior to FMLA, and which the FMLA, by expanding minimum levels of protection to all eligible employees, has helped to mitigate. Nonetheless, the majority of employees in all demographic groups report positive leave-taking experiences.

Overall Impact of the FMLA

The Family and Medical Leave Act has had a positive impact on employees overall. It has succeeded in replacing the piecemeal nature of voluntary employer leave policies and state leave statutes with a more consistent and uniform standard. The FMLA has not been the burden to business that some had feared. For most employers, compliance is easy, the costs are non-existent or small and the effects are minimal. Most periods of leave are short, most employees return to work and reduced turnover seems to be a tangible positive effect. The FMLA, with its signature features of guaranteed job protection and maintenance of health benefits, begins to emerge, even now, as a significant step in helping a larger cross-section of working Americans meet their medical and family caregiving needs while still maintaining their jobs and their economic security - achieving the workable balance intended by Congress.

Reading Center
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CHAPTER 1

Introduction

A. Families and Employers in a Changing Economy

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1. Businesses and the Economy: Meeting the Demands of the Global Marketplace

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necessary skills and work organization to meet the changing demands of the market - has also become integral to each company's ability to succeed.

These changes have occurred simultaneously with two other trends - an increasing number of employees working for smaller businesses, and an increasing number of people working in service sector jobs, many of which are low-wage.[2] Contracting-out strategies have contributed to the growth of the business services sector, particularly in advertising, mailing and reproduction, services to buildings and management, and public relations.[3] The health services, business services, and government and defense sectors accounted for fully one-half of the total 18.8 million non-agricultural jobs created in the United States between 1979 and 1989.[4] Small businesses have been responsible for much of the country's economic growth and job creation in recent years;[5] however, some argue that the economic vitality of small firms is strongly linked to that of large firms.[6] At the same time, however, many small firms experience difficulty in providing the same level of wages and benefits that the larger scale employers have traditionally made available.[7]

Many responsible employers, as well as labor organizations and others, are seeking feasible solutions to cushion the impact of global competition on American workers. They are asking society as a whole to consider a difficult set of questions: what responsibilities do employers and workers have to each other? How can businesses effectively compete in a global economy while ensuring adequate living standards and benefits for their employees at home?

2. The Changing Workforce

The changing economy, which has brought new challenges to the American business community, has also wrought major transformations in the composition of the

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[2] Edward E. Potter and Judith A. Youngman, *Keeping America Competitive: Employment Policy for the 21st Century*, (Lakewood, CO: Glenbridge Publishing, 1995), p. 108 and William C. Dunkelberg, "Presidential Address: Small Business and the U.S. Economy," *Business Economics*, January 1995, Vol. 30, No. 1.

[3] Lois M. Plunkert, "The 1980's: A Decade of Job Growth and Industry Shifts," *Monthly Labor Review*, September 1990, p. 5.

[4] Potter and Youngman, p. 108.

[5] Dunkelberg, January 1995.

[6] For example, in a study of small manufacturing firms in the state of New York, the most important customer of more than half the small firms in the sample was a large corporation. The authors argue, "A main reason for the development and success of small firms seems to be the niche they have found in serving large firms, supplying them with custom goods on short notice under complex conditions." See R. C. Young, J.E. Francis, and C.H. Young, "Small Manufacturing Firms and Regional Business Networks," *Community Development: Research Briefs and Case Studies*, (Ithaca: Cornell Community and Rural Development Institute, 1993).

[7] Potter and Youngman, p. 111, Chart 3-4 and Lawrence Mishel and Jared Bernstein, *The State of Working America: 1994-95*, (Armonk, NY: M.E. Sharpe, Inc., 1994), pp. 189-90, Table 3.55.

American workforce. Families have been struggling to make ends meet in the only ways available to them - by working longer hours and by sending more family members, mainly women, into the labor force. First, individual workers have, on average, been working more weeks, and more hours per week.[8] Second, women have been entering the country's paid workforce in steadily increasing numbers. Indeed, one-half of the total labor force are now workers who live in dual-earner families.[9]

This increase in the number of women on the job, and in the length of their tenure, can be attributed to a number of factors. For most women, the financial needs of their families are the key motivators spurring their entrance into the paid labor force. For some women, entrance into the labor force is linked to pursuit of higher education and their search for a fulfilling career. But increasingly, women entering the workforce serve as sole providers for their families. Married-couple families, though still predominant, make up a smaller share of families than they did in the 1950's and 60's.[10] Approximately 23 percent of all workers with families have no spouse in the household to share wage-earning or caregiving responsibilities - and women now account for about 80 percent of that group.[11] During the 1970's and 80's, some couples decided to delay marriage and some chose to have fewer children than in prior generations.[12] As a result of all these factors, the years from 1970 to 1991 saw a dramatic surge of women - from 31-and-a-half million to 57 million - into the paid labor force. In 1994, women made up 46 percent of the total civilian labor force, an increase of 38.1 percent from 1970.[13]

3. Living Standards and Employment Security

The security of having a regular wage earner is essential to the economic well-being of all families; it is particularly crucial for the many low-income working families whose small paychecks already fail to keep them out of poverty. Yet, since 1979, there has been a significant expansion of workers earning low wages and a shrinkage in the share of workers, especially men, who earn mid-level wages.[14] Many working poor families have already "topped out" in terms of hours they are able to put into a job, either because they are already dual-earner households, or because the sole family provider is already working.

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[8] Indeed, increases in annual earnings over the last 15 years have been largely the result of people working more hours, rather than people earning higher hourly wages. See Ibid, p. 112 and Women's Bureau, US Department of Labor, *1993 Handbook on Women Workers: Trends and Issues* (Washington DC: U.S. Department of Labor, 1994), p. 3.

[9] Ellen Galinsky, James T. Bond, and Dana E. Friedman, *The Changing Workforce: Highlights of the National Study* (New York: Families and Work Institute, 1993), p. 60.

[10] Mishel and Bernstein, p. 34.

[11] Ibid, p. 34, Table 1.5.

[12] Women's Bureau, U.S. Department of Labor, *Trends and Issues*, p. 10.

[13] Ibid, p. 4, Table 2, and Bureau of Labor Statistics, *Employment and Earnings* (Washington, DC: U.S. Department of Labor, January 1995).

In fact, women single heads of household, including older women living alone, face a number of difficulties securing a living wage, be it lack of access to training, lack of access to capital to start their own business, or lack of child care and other supports.[15] While in 1993 women were found in almost every job and profession, most women are still working in traditionally female, low-wage occupations.[16]

The youngest families, with household heads aged 25 to 34 years, have also fared poorly in recent years. Many families in this group are likely to be bringing up young children and trying to buy a home of their own.[17]

While employment may not eradicate the threat of living in poverty, it is nonetheless the single most important weapon against it. Whether employees hold full-time or part-time jobs, whether they live in a one-income or dual-earner household, stable employment is crucial to most families' hopes for economic security.

4. Employment and Family: Caught in the Squeeze

The dramatic increase in dual-earner and single parent families has fueled the rising need among workers for access to more flexible hours and family-friendly policies, including leave from work to deal with family caregiving responsibilities. The same needs and problems which families have always had - caring for each other, their young, their sick and their old - still exist today. Now, as always, the family as an institution must, and does, provide for its own caregiving needs - needs that change with time and circumstances. Certainly, time off to care for children is something that all parents at some time require. But it has intensified since the late 1970's, as more and more mothers with young children have begun working outside the home. Indeed, recently, mothers with preschoolers and infants have accounted for the greatest growth in labor force participation among women. In 1980, 39 percent of mothers with children under two years of age were in the labor force. By 1992, 54 percent of mothers whose youngest child was one-year-old or younger were in the labor force.[18]

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[14] Mishel and Bernstein, p. 127, Table 3.10 and Figure 3E.

[15] The low wages earned by many women are due in part to a gender-based wage gap which, although diminishing, is still 28 cents an hour, based on annual earnings. See U.S. Bureau of the Census, *Income, Poverty and Valuation of NonCash Benefits: 1994*, (Washington, DC: U.S. Bureau of the Census, 1995, series P60-189), p. 20, Table A.

[16] Almost 60 percent (57.4 percent) of the female workforce are in female-dominated clerical, sales and service jobs; only 28 percent of women hold professional or managerial jobs. See Bureau of Labor Statistics, *Employment and Earnings*, (Washington, DC: U.S. Department of Labor, January 1994), Tables 20, 22 and 56.
In addition, 75 percent of all women still earn $25,000 per year or less. See U.S. Bureau of the Census, *Current Population Survey 1993*, preliminary data Table 18, "Occupation of Longest Job in 1993 - Total Money Earnings in 1993 of Persons 15 years and Older by Work Experience and Sex."

[17] Families with household heads aged 25 to 34 years in 1993 had incomes of $5,507 per year less than their counterparts did in 1979 (in 1993 dollars). The incomes of these families eroded .5 percent per year from 1979 to 1989 and 2.8 percent from 1989 to 1993, in stark contrast to the 2.5 percent annual growth rate between 1967 and 1973. See Mishel and Bernstein, pp. 31-32, Table 1.3.

There are also increasing numbers of working adults responsible for the care of their aging parents and other close relatives - both providing and making arrangements for such care.[19] As workers grow older, they will also more often be called upon to care for the needs of seriously ill spouses, or to take time off for their own serious medical conditions.

As family members' time on the job has increased, so has the tension between job and family. Historically, much of this caregiving has been carried out by women working as homemakers - women who now, more often than not, are holding down a full-time or part-time paid job. Single heads of families and working-poor dual-earner families are most at risk in the job/family squeeze. When family demands or emergencies arise that cannot be handled in "after work time," the precariousness of the balance is exposed. The problem is worst for low-income men or women who cannot afford the services that make working and caring for a household more manageable, such as adequate child care or eldercare.[20]

Employer policies and public policies that enable employees to combine paid work and caregiving alleviate the kinds of pressures that cause stress and sap energy, both at home and on the job. Recent studies have shown that women who work outside the home feel positively about having multiple roles, and are less likely to suffer from depression than women who are full-time homemakers.[21]

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[18] Women's Bureau, Department of Labor, *Trends & Issues*, pp. 10, 12, Tables 16 and 17.

[19] Almost one-fifth (18 percent) of the U.S. workforce, men and women, expect to be providing care for an aging relative in the next five years. See Galinsky, Bond and Friedman, p. 60.

[20] They also pay a higher proportion of their monthly family income on child care (26.6 percent for women in poverty, compared with 6.9 percent for women in families that are not in poverty). See Lynne M. Casper, Mary Hawkins, and Martin O'Connell, *Who's Minding the Kids? Child Care Arrangements: Fall 1991* (Washington, DC: U.S. Bureau of the Census, Current Population Reports, P70-36, 1994), p. 4.

The availability (or lack) of workplace policies that support families affects men as well as women. There is recent evidence that, as greater and greater numbers of women have joined the paid labor force, men's participation in household work and caregiving has slowly been increasing.[22] Indeed, according to the March 1995 Current Population Survey, there were two million children under 18 years of age living only with their fathers or male guardians, comprising 3.2 percent of the nation's children. Men also have sick children and spouses, as well as elderly or disabled relatives, whose caregiving is their responsibility.[23] Working fathers, too, find themselves risking their jobs or their career standings if they must take time off, or even limit their overtime work, for family responsibilities. And men who do take substantial periods of leave often face significant negative consequences and stereotyping when they return to work.[24]

The situation is aggravated by the fact that, when women are forced to relinquish their paychecks to provide care, it is often the man to whom the family must turn for its sole support. These demands can cause stress, especially for low-income families struggling to make ends meet, and all the more so if a family member is suffering from a serious health condition, for which the continuation of the father's health insurance benefits becomes crucial. Men's role as providers often leaves them little time to provide their families with much-needed caregiving support.

5. Employment or Family: Making Choices, Meeting Needs

For many employees - especially those who are parents with young children or those who have elderly or disabled family members - going to work involves careful and often complicated alternative caregiving arrangements. In the life of any family, moreover, it is inevitable that, from time to time, some family member - or the employee himself or herself - will have serious, perhaps unanticipated needs or medical problems that will require time off from work. At these times, policies that provide family leave and/or temporary medical leave become especially beneficial. For example:

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[21] Rosalind C. Barnett, et al., "Positive Spillover Effects from Job to Home: A Closer Look," Wellesley College, Center for Research on Women, Working Paper Series, No. 222, 1991 and Rosalind C. Barnett and Grace K. Baruch, "Women's Involvement in Multiple Roles and Psychological Distress," *Journal of Personality and Social Psychology*, 1985, Vol. 49, pp. 135-145.

[22] Notwithstanding these new trends, women still bear the primary responsibility for child care. See Juliet Schor, *The Overworked American* (New York, NY: Basic Books, 1992), pp. 36-37 and Casper, Hawkins, and O'Connell, p. 1.

[23] For example, the percentage of preschoolers cared for by their fathers while their mothers were at work increased from 15.1 percent in 1988 to 20 percent in 1990. See Casper, Hawkins, and O'Connell, p. 3.

[24] Carol Lawson, "Baby Beckons: Why is Daddy at Work?," *New York Times*, May 16, 1991, pp. C1, C3.

* Many infants are born into homes where both parents work. The American Academy of Pediatrics notes that infants (whether biological, adopted or foster children) are particularly vulnerable during the first few months of life, and require the active involvement of a parent or primary caregiver in the nurturing process. An infant's physical, cognitive and social development depend on establishing a strong attachment to its parents or primary caregiver.[25] For parents to fulfill these important developmental needs, time off from work is often needed.

* Almost half (42 percent) of all wage and salaried workers have children under 18 living at home.[26] As infants develop into toddlers, preschoolers and school-age children, they are bound to develop some illnesses along the way. Most are short-term, but some are chronic and a few are serious. A parent's presence during a child's serious illness is particularly crucial to a child's physical and emotional well-being. The American Academy of Pediatrics notes that children have increased dependency needs when they are sick and require the unique warmth and security that their parents can offer.[27] Parental care and comfort for seriously ill children is sound pediatric practice, often requiring time off from work or other flexible, family-friendly arrangements.[28]

* Workers, primarily women, but increasingly men, are also the primary caregivers for their aging parents and other ill or disabled relatives. Studies show that families and friends provide between 60 percent and 80 percent of the care older people

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[25] Testimony of The American Academy of Pediatrics at the Joint Hearings before the Subcommittee on Labor-Management Relations and the Subcommittee on Labor Standards of the Committee on Education and Labor, U.S. House of Representatives, 100th Congress, 1st session, February 25 and March 5, 1987; and *Starting Points: Meeting the Needs of Our Youngest Children* (New York: Carnegie Corporation, 1994) pp. 69, 106.

[26] Galinsky, Bond, and Friedman, p. 42.

[27] Testimony of The American Academy of Pediatrics at the Joint Hearings before the Subcommittee on Labor-Management Relations and the Subcommittee on Labor Standards of the Committee on Education and Labor, U.S. House of Representatives, 100th Congress, 1st session, February 25 and March 5, 1987.

[28] Although parents often feel that personally taking care of their sick children is very important, in fact workers miss very little work because of child care responsibilities. A national study found that in one three-month period, workers with children under 13 years of age took less than one full day off, and less than one day when they arrived at work late or left early, to attend to child care responsibilities. See Galinsky, et al., p. 68.

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receive.[29] This translates into about ten to 15 percent of employed adults currently providing assistance to an older relative, and another five to ten percent providing assistance to a person under the age of 65 with a disability. To care for elders' many and changing needs, employed primary caregivers often put in long hours providing informal care on top of their work hours.[30] They often rearrange their work schedules, work fewer hours than they wish to, or take time off without pay. According to a 1989 survey of long-term care, 64.9 percent of employed caregivers made at least one of these accommodations to manage conflict between work and caregiving responsibilities.[31]

These caregiving responsibilities will grow as the age and size of the older population of the United States continues to climb. It is estimated that one out of five Americans will be over 65 years of age by the year 2030.[32] As medical science helps people to live longer - most women who reach age 65 can be expected to live to their middle 80's and men's life expectancy is projected to reach 75 by the year 2010[33] - elders will need care for longer periods of time.

* Many workers must also be temporarily absent from their jobs for their own medical disability. In 1994, data from the Bureau of Labor Statistics showed that 3.1 percent of full-time wage and salaried workers 16 years and older had an absence from their job due to illness.[34]

* Many workers also must take time off from their jobs to care for seriously ill spouses. According to analyses of the 1987 National Survey of Families and Households, 2.6 percent of Americans aged 34 to 49 and 4.6 percent aged 50 to 64 were providing informal care to a disabled spouse.[35] These numbers can also be expected to grow as the population continues to age and both men and women live longer.

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[29] Women's Bureau, Department of Labor, *Trends and Issues*, p. 156.

[30] Mary Elizabeth Jackson, data presented at "The Changing Face of Informal Caregiving," a conference sponsored by the Office of the Assistant Secretary for Planning, Department of Health and Human Services, Berkeley Springs, WV, October 15, 1992.

[31] The 1989 National Long-Term Care Survey and companion National Informal Caregivers Survey found that, on average, employed caregivers provide 18 hours of informal assistance to disabled elderly relatives. See Pamela Doty et al., "Informal Caregiving," *The Continuum of Long-Term Care: An Integrated Systems Approach*, Ed. Connie Evashwick, (Albany, N.Y.: Delmar, 1995), pp. 125-138.

[32] Women's Bureau, Department of Labor, *Trends and Issues*, p. 150, Figure 2.

[33] Ibid., p. 149.

[34] Bureau of Labor Statistics, *Employment and Earnings*, January 1995.

[35] Nadine Marks, "Caregiving Across the Lifespan: National Prevalence and Predictors," *Family Relations*, Volume 45, pp. 27-36, 1996.

Without the availability of leave from work to give birth or to take care of family responsibilities, employees - primarily women - are faced with the choice of returning to work prematurely or giving up their jobs. The economic cost of such a break in employment can be high. For example, in one study, employment breaks for childbirth and adoptions were estimated to cost women approximately $31 billion in foregone wages annually.[36]

The long-term economic effects of the lack of job protection have a particularly harsh impact on certain subgroups. Low-income and one-parent families experience the greatest difficulty in finding adequate infant and pre-school child care. Both lower wages and job loss result in larger numbers of families in need of public assistance and, consequently, in higher costs to taxpayers for Medicaid, food stamps and income assistance programs.[37]

Older women generally have a more difficult time reentering the workforce after losing a job than men, although it varies with skill and education level. When frequent breaks in employment to provide family care result in job loss, it is difficult for both women and men to vest in a pension, to amass Social Security credits, or maintain their health insurance coverage, exposing them to a greater risk of poverty and the need for public assistance in old age.

6. Family and Medical Leave Policies

Employers, employees and the general public all have a stake in the development of a highly productive American workforce and in families that raise healthy and capable children. In recent years, the nation has become increasingly aware of the severe problems employees often face in fulfilling both job and family obligations. Some employers voluntarily have taken formal action to reduce this tension through their own set of maternity, parental or family and medical leave policies before the Family and Medical Leave Act (FMLA) was passed. Today, many more employers are providing these kinds of policies through their compliance with the new law.

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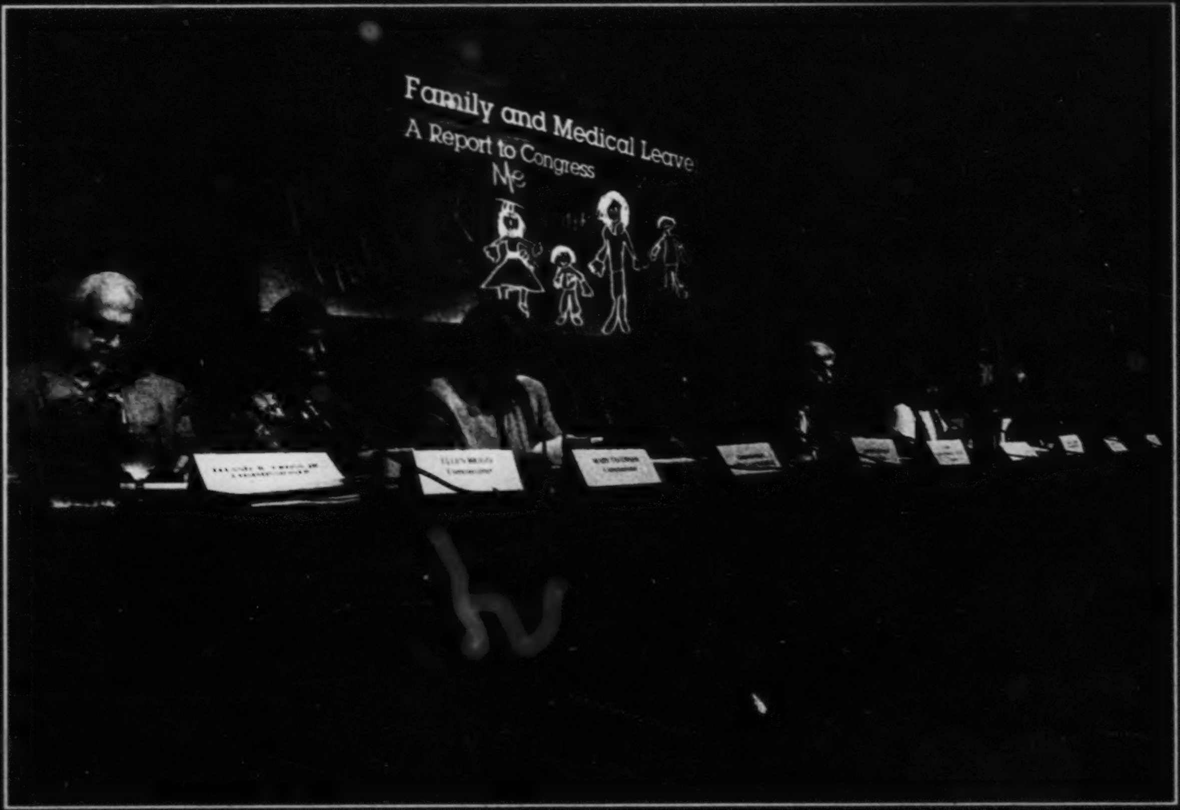
[36] These costs resulted from lost earnings, experience and seniority, thereby contributing to the persistent wage gap between men and women. See Roberta Spalter-Roth and Heidi I. Hartmann, *Unnecessary Losses: Costs to Americans of the Lack of Family and Medical Leave*, (Washington, DC: Institute for Women's Policy Research, 1990), pp. 16-17, Table 4.

[37] Ibid., p. 25, Table 9.

A Workable Balance

While employer policies are inevitably part of any solution to work and family conflicts, the range and sufficiency of those policies must be considered in light of society's overall needs, both to families and to the business community. The FMLA, which took almost a decade to work its way through Congress, was enacted to provide a national policy that supports families and employers in their efforts to strike a workable balance between the competing demands of job and home. This report attempts an initial assessment of family and medical leave policies in general, and FMLA in particular: are we approaching the workable balance envisioned by this nation's lawmakers?


Family and Medical Leave
A Report to Congress
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How the Commission Went About Its Work

A. Mission of the Commission on Leave

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In 1993, Congress passed the Family and Medical Leave Act (FMLA, or the Act), which requires employers with 50 employees or more to provide up to 12 weeks of unpaid, job-protected leave to employees for the following reasons: care of a newborn, newly adopted or foster child; care of a child, spouse or parent with a serious health condition; or the serious health condition of the employee, including maternity-related disability. Employees are eligible to take leave if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous 12 months, and if there are at least 50 employees working for their employer within a 75-mile radius.

Title III of the FMLA established a bipartisan Commission on Leave (the Commission) to conduct a comprehensive study of mandatory and voluntary policies relating to family leave and temporary medical leave and to submit a report of its findings to Congress.

Specifically, the Family and Medical Leave Act charges the Commission to study the following points:

(A) existing and proposed mandatory and voluntary policies relating to family and temporary medical leave, including policies provided by employers not covered under this Act;
(B) the potential costs, benefits, and impact on productivity, job creation and business growth of such policies on employers and employees;
(C) possible differences in costs, benefits, and impact on productivity, job creation and business growth of such policies on employers based on business type and size;
(D) the impact of family and medical leave policies on the availability of employee

benefits provided by employers, including employers not covered under this Act;
E) alternate and equivalent State enforcement of Title I with respect to employees described in Section 108(a);
F) methods used by employers to reduce administrative costs of implementing family and medical leave policies;
G) the ability of the employers to recover, under Section 104(c)(2), the premium described in such section;
H) the impact on employers and employees of policies that provide temporary wage replacement during periods of family and medical leave."

Since its first meeting in November 1993, the Commission's work focused on obtaining research that would provide responses to the above eight points. The purpose of this report is to provide a comprehensive discussion and analysis of that research, which includes a review of the literature, two commissioned surveys and a number of other smaller studies, as well as three public hearings on the subject of family and medical leave.

B. Organization of the Commission

The Family Leave Commission was well-positioned to assume the substantive challenge posed by Congress. Commission members possessed expertise and a broad range of practical experience relevant to evaluating family and medical leave issues. Members included Congressional leaders from both political parties, representatives from labor and the business community, including small businesses and ex-officio Cabinet members from the Federal agencies with the most direct responsibility for, and interest in, family and medical leave policies (See Biographical Sketches of Commission Members in Appendix).

The Commission held six meetings between November 10, 1993 and October 23, 1995. The meetings were well-attended. The Commission elected a Commission Chair and Vice Chair, Senator Christopher J. Dodd (D-CT) and Donna R. Lenhoff, General Counsel of the Women's Legal Defense Fund, respectively. A bipartisan Technical Task Force of Commission members was also established, to operate as a working sub-group of the whole Commission.[1] The Technical Task Force held sub-group meetings and occasionally convened teleconferences with Commission members to advance the work of the Commission. Commission members remained extremely involved throughout the entire process of fulfilling the Congressional mandate.

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[1] The four members of the Technical Task Force were Suzanne Day, staff for Commission Chair, Senator Christopher Dodd; Donna Lenhoff, Commission Vice-Chair; Damon Tobias, staff for Senator Larry E. Craig and Mary Tavenner

During its first year of operation, the Commission was faced with the dilemma of a broad and ambitious legislative mandate but no Congressional appropriation with which to move ahead. The Commission also did not know whether money would be appropriated at any time in the future. Without such funding, it was clear that the Commission lacked the resources to authorize any research effort to obtain new data to respond to the eight Congressionally-mandated questions. The first year was thus devoted to the development of a work plan, relying, to the extent possible, on Executive branch agency resources. The Commission knew that a body of research on family and medical leave and related issues already existed, some of which had potential as valuable data sources for its work.

Given the uncertainties concerning funding, the Commission members agreed early on that a comprehensive assessment of existing data sources was needed, to determine: 1) what was already available that could be used to respond to the eight questions posed in the statute; and 2) whether, and to what extent, there were gaps in that data that needed to be supplemented by new research. It was clear that even if funding did ultimately become available, such an assessment would be valuable in enabling the Commission to take advantage of all available data and avoid replicating already-existing information.

C. Assessment of Existing Data Sources

In 1994, the Commission conducted a careful review of existing and potential data sources on family and medical leave, specifically addressing the extent to which existing data sources might be used to address each of the Commission's eight questions.[2] The data sources fell into three main categories: 1) ongoing surveys by government agencies[3]; 2) one-time studies by individual researchers[4]; and 3) one-time studies by benefits consulting firms and business trade organizations.[5]

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[2] Ellen Galinsky, et al. *Report to the Executive Director of the Commission on Leave: Existing and Potential Data Sources for Addressing FMLA Research Questions* (New York: Families and Work Institute, September 1994.)

The analysis was divided into the following topic headings which provided a useful grid for plotting the Commission's questions against existing sources: current and proposed policies and practices; knowledge of FMLA; FMLA implementation and compliance; FMLA impact on employers; FMLA impact on employees; and wage replacement.

With respect to current policies and practices of employers (both covered and not covered by the FMLA), the Employee Benefits Survey conducted by the Bureau of Labor Statistics of a nationally representative sample of employers was found to provide the best available information. The Employee Benefits Survey contains information on the paid and unpaid family and medical leave policies of both public and private sector employers of all sizes. Other surveys of businesses were limited due to the scientifically non-representative nature of their samples.

With respect to FMLA implementation and compliance, the information about the methods that employers were using to minimize the costs of implementing family and medical leave policies was not available for nationally representative samples of employers. However, FMLA compliance data was available from the Department of Labor's Wage and Hour Division.

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[3] These included U.S. Department of Commerce, Bureau of the Census, *Characteristics of Business Owners Survey*, U.S. Department of Commerce, Bureau of the Census, *Current Population Survey*, U.S. Department of Labor (DOL), Wage and Hour Division, *DOL Enforcement Data*, U.S. DOL, BLS, *Employee Benefits Survey*, U.S. DOL, BLS, *Employment Cost Index Survey*; U.S. Department of Health and Human Services, National Center for Health Statistics, *National Health Interview Survey*, U.S. DOL, BLS, *National Longitudinal Study of Youth*.

[4] The Conference Board, Work-Family Roundtable, 1994; Roberta M. Spalter-Roth and Heidi I. Hartmann, *Unnecessary Losses: Costs to Americans of the Lack of Family and Medical Leave* (Washington, DC: Institute for Women's Policy Research, 1988); Jane Waldfogel, *The Family Gap for Young Women in the US and UK: Can Maternity Leave Make a Difference*, (Cambridge, MA: Malcolm Wiener Center for Social Policy, Kennedy School of Government, Harvard University, 1994); William M. Mercer, Inc. and University of California, Berkeley, *Survey Results Family and Medical Leave Act*, (University of California, Berkeley, 1994); National Institute of Child Health and Human Development, *Study of Early Child Care*, Eileen Trzcinski and William T. Alpert, *Leave Policies in Small Business: Findings from the US Small Business Administration Employee Leave Survey*, (Washington, DC: U.S. Small Business Administration, 1990), James T. Bond, Ellen Galinsky, et al, *Beyond the Parental Leave Debate: The Impact of Laws in Four States*, (New York: Families and Work Institute, 1991), Wisconsin Maternity Leave and Health Project, University of Wisconsin-Madison.

[5] Studies in this category included: Employee Benefit Research Institute, *Employee Benefit Research Institute Poll*, (Washington, DC: EBRI, 1993); Hewitt Associates, On Employee Benefits, *Employer Responses to Family and Medical Leave Legislation*, (Lincolnshire, IL: Hewitt Associates, 1993). Steven W. Barnett, and Gerald L. Musgrave, *The Economic Impact of Mandated Family Leave on Small Businesses and Their Employees*, (Washington, DC: The National Federation of Independent Businesses Foundation, 1991).

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With respect to FMLA's impact on employers, the assessment found that available data, such as membership surveys by business associations and client surveys by benefits consulting firms, provided a partial picture of what employers were doing to implement more generous leave policies, or to extend FMLA-like leave benefits to employees not eligible under the Act. It was determined, however, that additional research based on a nationally representative sample of employers would be useful. There were no data sources that adequately and convincingly addressed the question of whether employers reduced fringe benefits because of the FMLA. It was also determined that the magnitude of direct and indirect costs and benefits to employers of family and medical leave policies in general, and the FMLA in particular, was limited. In general, there was some useful data on current employer policies and practices, but virtually no data on access and usage of the new law.

In regard to FMLA impact on employees, it was found that existing data regarding pre- and post-FMLA utilization of family and medical leave benefits was limited at best, and that new research would be required to document the incidence and length of family and medical leave for different purposes by different segments of the labor force. Information about the costs and benefits of family and medical leave for employees and their families was also inadequate.

Little research was found on the subject of wage replacement. The Families and Work Institute's State Parental Leave study, which covered four states, provided some data on the subject, as one of the states studied mandated temporary disability insurance (TDI) coverage for maternity-disability leave. In addition, the Institute for Women's Policy Research was developing estimates of the costs of partial to full wage replacement for different types of family and medical leave.[6]

In sum, the assessment found some useful data on current employer policies and practices; however, with the exception of the Employee Benefits Survey, the data were not based on scientific samples representative of the entire business community. Employee data were more scarce, with virtually no representative random sample survey data available. Moreover, none of the existing research provided data on access, usage or impact of the new law per se. Consequently, it was determined that while some data sources already did exist to address parts of the questions posed by the statute, new research would be needed to obtain accurate data in order for the Commission to respond comprehensively to all the issues stipulated by the Commission's legislative mandate.

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[6] Heidi Hartmann and Yoon Young-Hee, *Expanding Social Insurance to Include Paid Family Care Leaves* (Washington, DC: Institute for Women's Policy Research, 1995).

D. Public Hearings

The Commission placed a high priority on hearing directly from the public. Specifically, the Commission believed that it was important to gain a first-hand look at the effects of the FMLA, and of family and medical leave policies in general, on businesses, on employees and on families. To do this, the Commission decided to conduct public hearings in different sites across the country. The hearings enabled the Commission to hear first-hand from the affected employers, employees and their families.

Commission staff worked hard to reach a wide variety of people whose experiences might not be fully captured by the research. Panels were arranged so as to provide a broad cross-section of views and perspectives, including a case study of one company's experience, on all topics of relevance to family and medical leave, and the FMLA. Panels discussed such topics as voluntary family and medical leave policies, costs and benefits of leave policies to employers and employees, concerns of small employers, employees' experiences with leave-taking and wage replacement.

A broad cross-section of U.S. workers and employers, from different sectors of the economy, different-sized worksites and with diverse perspectives, testified about their own experiences with family and medical leave, and with the new Act. The hearings gave the Commission the opportunity to hear from individuals - business owners, workers, managers, spouses, parents and family members - about how the issue of balancing work and family had affected them and their businesses directly, and how they felt about utilizing and/or complying with the new law. Their testimony provided the Commission with important insights into the impact of family and medical leave policies, and the FMLA. The hearings were held on May 8, 1995, in Chicago, Illinois; on June 26, 1995, in San Francisco, California; and on August 4, 1995, in Washington, D.C.

E. Commissioned Research

Based upon the review of existing data sources, it was clear to the Commission that new research was needed to provide the kind of data that would allow comprehensive answers to all the mandated questions. In FY '95, Senator Dodd, the Commission's Chair, secured a Congressional appropriation so that the Commission could do its work. The Congressional funding was supplemented by an additional allocation from the United States Department of Labor.

The Commission immediately proceeded with the task of commissioning the new research in the form of two major studies - an Employer Survey and an Employee Survey. As the existing data were focused on voluntary family and medical leave policies prior to the passage of FMLA, the main focus of the new research was to provide data on how employer policies were changing as a result of the new law; the relative costs and benefits to employers of providing family and medical leave; how employees were faring under the new law; and the nature of leave-taking for employees in both covered and non-covered firms.

The Commission contacted the Bureau of Labor Statistics (BLS), which had previously completed contracts with two research organizations for the purpose of filling task orders on specific survey research issues. The two research organizations were Westat, Inc., a social science research firm located in Rockville, Maryland, and The Institute for Social Research, Survey Research Center at the University of Michigan. Other clients who had used these same contracts included the Employment and Training Administration (ETA) and the Internal Revenue Service (IRS). Working with the Bureau of Labor Statistics, Commission staff wrote task orders under the BLS contract for Westat to conduct an Employer Survey and for Michigan to conduct an Employee Survey. In addition, the Commission decided to have Westat implement an "embedded" Employee Survey, focusing on a non-random sample of leave-takers from the firms responding to the Westat Employer Survey. The FMLA projects were related to BLS research interests, because they would provide information about the performance of a new telephone sampling design and the effectiveness of telephone interview procedures for establishment surveys.

The bipartisan Technical Task Force was formed in early 1995 to assist in the implementation of the studies. The Technical Task Force formulated questions designed to elicit responses directly related to the study agenda mandated by the U.S. Congress. Working with the Technical Task Force, the Westat and Michigan research teams designed the survey instruments for the studies. Commission members were consulted throughout the instrument design process and their recommendations were used to improve the instruments.

Westat, Michigan and the U.S. Department of Labor took all steps possible to assure that the data collected from the Employer Survey, the Employee Survey and the "embedded" Employee Survey were kept confidential to the fullest extent allowed by law.

1. Employer Survey

This national, random sample Employer Survey, conducted by Westat, provides the first statistically valid data on employers of diverse sizes assessing both their experience with the Family and Medical Leave Act as well as family and medical leave policies in general. The data provide national estimates for a number of important issues: the extent of coverage of the new law; the impact of the Act on FMLA-covered businesses, including costs and benefits; and the possible impact the law would have if expanded to cover establishments that are not now covered by the Act.[7]

The sample design that the Employer Survey used was a stratified, probability sample of private-sector business establishments in the United States, with strata defined by size of the establishment and major industrial classification (SIC) division. The Dun & Bradstreet DUNS Market Services file (DMS) served as the sample frame. DMS is one of the few commercially available lists of business establishments that is reasonably comprehensive in coverage and that includes relevant size information necessary for designing effective worksite samples. Establishments were selected directly proportionate to the number of employees reported on the DMS frame. The unit of analysis was the worksite, defined as a "single physical location where business is conducted or where services or industrial operations are performed."[8] Government and quasi-governmental establishments (e.g., public schools, universities and post offices) at all levels were excluded from the sample frame.[9]

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[7] For information on Westat's description of the "Limitations of the Research," see David Cantor, et al., *The Impact of the Family and Medical Leave Act: A Survey of Employers* (Rockville, MD: Westat, Inc., 1995) p.6-1.

[8] The survey did not attempt an assessment of "covered companies," but rather of "covered worksites." This is consistent with BLS practice for comparable employer surveys.

[9] This population represents an additional 18 to 19 million workers.

Project staff for the Employer Survey reviewed the Commission's draft questionnaire, clarified with the Technical Task Force the purpose of each item and its relationship to the Commission's research objectives, then designed the instrument. Prior to initiating the actual survey, the Employer Survey staff extensively pre-tested the survey instrument to evaluate and modify it for final use with the chosen sample.

The Employer Survey was conducted in three steps. First, establishments drawn from the DMS file were screened to ensure the eligibility of the establishment and to obtain the name of the person at the worksite most knowledgeable about family and medical leave policies. Second, that person was mailed an advance package of materials, providing background about the project and informing him or her, through a letter from Secretary of Labor Robert B. Reich, that an interviewer would be contacting him or her shortly by telephone. This step was included to encourage the key informant to collect relevant information and to respond to questions based on actual personnel files, rather than memory or estimates. Respondents were also assured that all the data collected for the survey would be kept confidential to the fullest extent allowed by the law.

The third step was the telephone interview. Data collection for the Employer Survey lasted approximately six weeks, between June 15 and August 2, 1995. Respondents from a total of 1,206 worksites were interviewed. The response rate was 73.2 percent. A report on the findings, including some analysis of the data, was submitted to the Commission in early October 1995.[10]

2. Employee Survey

The Employee Survey, conducted by the University of Michigan Survey Research Center, represents the first national random sample survey of employees on their leave-taking. To our knowledge, no comparable survey of employees has been undertaken, although some data relevant to leave-taking exists in the Census Bureau's Current Population Survey (CPS) and in the SBA data of employers regarding employee leave-taking. The data provide important national estimates on the need for and occurrence of taking leave from work for reasons covered by the Family and Medical Leave Act.

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[10] There were three components to the Employer Survey weighting process: first, a "base-weight" was created by taking the inverse of the probability of selection; second, a non-response adjustment was made to the base weight within categories of size and SIC classification; and third, a post-stratification adjustment was made by size and industry classifications to the total that BLS publishes.

The Commission faced several difficult challenges in designing the Employee Survey. There was a deep interest not only in obtaining the lacking baseline data on employees and their leave-taking patterns, but also on gaining new qualitative data on the importance and value of leave-taking to employees and their families. However, these goals were significantly constrained by the task of locating leave-takers from a national random sample telephone survey of households. They were further constrained by the need to keep the interview brief and the difficulty of collecting qualitative data on the telephone. It became clear that, because of the Commission's resource limitations, the focus would have to be on obtaining nationally representative, quantitative data on leave-taking patterns, with limited attention to qualitative data. This choice was somewhat easier to make given the decision of the Commission to hold three public hearings across the country, to conduct a small number of case studies with leave-takers, and to use this qualitative information to supplement the survey findings.

The target population of the Employee Survey was employees aged 18 or older who lived in the continental United States in a household with a telephone; and who had been employed for pay (private or public sector) any time within approximately the last 18 months, between January 1, 1994 and the time of the interview, in the Spring/Summer of 1995. The sample design allowed for more than one respondent to be selected from a household. When a household was contacted, all eligible residents were listed and screened for eligibility for one of the three categories listed below. To achieve fixed sample size allocations for each of the three respondent categories, a category-specific subselection rate was applied for each eligible person and the person was either selected for interview or subsampled out. Following are the three categories into which the sample was divided:[11]

1) leave-takers: people who since January 1, 1994 had taken leave from work for maternity disability; to care for a newborn, newly-adopted or new foster child; or for their own serious health condition; or for the serious health condition of their child, spouse or parent that lasted more than three days or required an overnight hospital stay;

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[11] The actual number of people interviewed in each category include 1218 "leave-takers," 206 "leave-needers" and 928 "employed-only."

2) leave-needers: people who since January 1, 1994 needed, but did not take, leave from work for the reasons listed above; and

3) employed-only: people who neither took leave nor needed to take leave in the defined time period, but who were employed during the period from January 1994 up to the interview.

The Commission supplied questions it wanted to include in the Employee Survey, and Employee Survey staff drafted and refined the instrument, with Commission review and input. Resource constraints made it necessary to eliminate some questions the Commission would have liked to ask from the final instrument.[12] The Employee Survey team then conducted extensive pre-testing prior to implementing the survey in the field. The Employee Survey took about ten minutes per leave-taking employee, five minutes per leave-needing employee, and three minutes per employed-only person.

All interviewers working on this study were part of the trained staff of the SRC Survey Support Laboratory. The majority of interviewers were highly experienced, with nearly 50 percent having between two and four years of experience and one-third having five years or more. All received the following study-specific training to prepare them for the interviewing process:

Prior to the training, interviewers received a full set of study materials, along with training and practice interview directories. These allowed interviewers to learn about the nature of the project and to practice with the application prior to training. Training was conducted over the course of ten two-hour conference calls. Following training, and prior to beginning production, each interviewer was required to conduct three taped and scripted practice interviews. The regional field supervisors reviewed the tapes and scripts and provided immediate feedback. Once competency was achieved, the interviewer was approved to begin production work. Two weeks following the initial training, a follow-up mini-training was conducted.

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[12] For example, the Commission would have liked to have gathered information on personal income, not just household income, and more data on occupation/skill level of employees. These data would be useful to include in future research.

The survey was divided into four sections:

Section A was administered only to employees who actually took leave for a reason covered by the Act. The questions elicited details about the leave, covering behavioral and attitudinal information.

Section B was given only to employees who needed to take leave for a reason covered by the Family and Medical Leave Act, but did not take it. The questions asked about their reason(s) for needing to take leave, their reasons for not taking leave, and what they did instead to take care of their situation.

Section C, administered to all respondents, asked a variety of questions designed to elicit information on employees' attitudes and knowledge about the FMLA, their anticipated need for leave in the future, and their eligibility for FMLA.

Section D asked a series of demographic questions, including marital status, race/ethnicity, number of dependents, educational level and income. Age and gender information had already been obtained through the household listing, prior to the Employee Survey.

Employees responding to the Employee Survey were guaranteed confidentiality and anonymity. During the field period, from June 1 through August 12, 1995, Employee Survey staff screened 20,373 randomly selected telephone numbers, of which 10,274 (50 percent) were determined to be working household telephone numbers. The screening interview was completed for 8,492 of these sample households. Completed interviews were conducted with employees from 2,352 of these households. The overall weighted response rate is the product of the screening and interview response rates. The response rate was between 71 and 75 percent, depending on respondent type (leave-taker, leave-needer or employed-only).[13]

3. Other Commissioned Research

In addition to the major Employee and Employer Surveys discussed above, the Commission supplemented its core research effort with some additional studies to fill specific remaining gaps in the information needed to provide answers to the eight mandated questions. These studies included one survey based on a nationally representative random sample of businesses, and four other surveys based on non-random, non-representative samples. A sixth report presented four case studies based on open-ended interviews with leave-takers. The seventh supplemental study was a research paper consisting of an evaluative literature review on the subject of wage replacement policies offered voluntarily by employers.

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[13] The final weight is the product of three components: 1) a sample selection weight factor that is the reciprocal of the probability that the respondent is included in the sample; 2) a screening non-response adjustment factor that adjusts for differential screening response rates across 45 Census Divisions by metropolitan status cells; and 3) an interview non-response adjustment factor that adjusts for different response rates by sex and age group within each of the three categories of respondents - leave-takers, leave-needers, and employed-only.

a. Census Bureau

The Bureau of the Census (Department of Commerce), conducts a Characteristics of Business Owners (CBO) survey every five years in conjunction with its Economic Census. In support of the work of the Commission, and in order to meet the Commission's report deadline, the Census Bureau undertook a special early mailing of questions, including those pertaining to the FMLA, to a small sample of a universe that includes sole proprietors, partnerships and subchapter S corporations, who filed IRS forms 941 or 943 (excluding farms). All other corporations, sometimes referred to as C corporations, were excluded. The firms in this universe thus tend to be smaller firms. There are about 3,000,000 companies that are represented by the final survey results. The sample reported on here included 1,350 businesses who filed form 941 or 943 tax returns with IRS for 1994. At the request of the Commission on Leave, the Bureau of the Census and CBO sponsors (the Small Business Administration and the Minority Business Development Administration (DOC)) agreed to include a series of questions specifically addressing FMLA issues in its 1995 survey.

Although findings from this sample cannot be generalized to the universe of all private-sector employers in the United States economy, the businesses in the sample give us an important portrait of small employers in the U.S., a group that received particular attention in the debate surrounding family and medical leave legislation. Only 3.5 percent of the firms in the Census sample have more than 50 employees and would be considered "covered" employers.

b. State Survey

State or local laws which provide more generous family or medical leave rights than those established under the FMLA are not superseded by it. To identify which states have their own family and medical leave laws, and to learn about their provisions, Commission staff developed a "state enforcement mini-survey." The mini-survey contained ten questions concerning individual state family and medical leave laws.

Three of the state mini-survey's ten questions pertained to one of the Commission's specific mandates for study, the question of "alternate and equivalent State enforcement" of the Act with respect to teachers and educational support staff. Specifically, FMLA, Section 108 restricts teachers' ability to take certain types of leave ordinarily available under the Act. The restrictions pertain to intermittent or reduced scheduled leave and leave near the conclusion of an academic term. Following are the three questions on the state mini-survey pertaining to teachers:

1) What family and medical leave provisions exist in your state law that relate specifically to instructional persons (teachers)?;

2) How are these provisions enforced? By whom?; and

3) What problems, if any, exist for local school administrators if they have to report to both state and federal enforcement entities?

Commission staff contacted each state in order to identify the person with the most knowledge about its family and medical leave policies. That person was sent a copy of the questionnaire. The respondents from the 34 states (in addition to Puerto Rico and the District of Columbia) that had family and medical leave laws were also provided a copy of their state's policy, obtained from the Women's Bureau.[14] After allowing the respondent sufficient time to review the materials, an eight to 12 minute interview was conducted by telephone.

c. Surveys to Education Professionals

As mentioned above, the FMLA limits the ability of teachers and educational support staff to take certain kinds of leave generally available under the Act, and it specifically charges the Commission to study alternate and equivalent state enforcement of Section 108 with respect to those workers. The Commission contacted major management and teacher organizations in the education field, inviting them to contribute their expertise to the research process. Specifically, the Commission contacted the American Association of School Administrators, the National School Board Association, the American Federation of Teachers (AFT) and the National Education Association (NEA), the two AFL-CIO labor unions representing teachers in the U.S. Of the various educational organizations contacted, only the AFT and the NEA responded affirmatively, each offering to conduct studies designed to shed light on the question posed to the Commission regarding the special conditions in the FMLA applicable to teachers. Neither of these studies purports to be a scientific, random-sample survey.

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[14] Women's Bureau. U.S. Department of Labor. *State Maternity/Family leave law.* (Washington, DC: U.S. Department of Labor, 1993.)

i. National Education Association

The National Education Association (NEA) represents 2.2 million members, the vast majority of whom are teachers and educational support staff. The NEA survey elicited information on the level of coverage, the extent of FMLA use, the impact on the workplace and suggestions for further improvements in the FMLA. Thirty-five state affiliate offices representing 30 different states responded to the NEA's two-page questionnaire.

ii. American Federation of Teachers

The American Federation of Teachers (AFT) conducted a telephone survey of its locals in Illinois and Texas to determine whether collective bargaining had any bearing on the practical application of FMLA for members and their families. In Illinois, leave-of-absence rules are negotiated in collective bargaining or provided in state statute. In Texas, leave-of-absence rules are established by school boards.

AFT staff developed a questionnaire on various aspects of FMLA that were of particular interest to the union. In cases where leave was granted, the questionnaire asked whether health care, paid leave and return-to-work rights were also provided. The questionnaire also asked about the impact on teachers of special K-12 leave provisions, as well as whether or not teachers were being asked to meet the 1,250 hour work requirement to be eligible for FMLA protections.

The telephone survey was conducted between May 1, 1995 and June 7, 1995. All locals in Illinois with at least 100 members, as well as several smaller locals, were contacted - a total of 49 locals. Thirty-two of those locals (65 percent) responded to the survey. The replying locals represent about 48,000 (84 percent) of AFT members in Illinois. All 22 Texas locals were contacted, of those, nine local representatives (40 percent) responded. These nine locals represent 14,500 (88 percent) of AFT's Texas members.

d. Catalyst

Catalyst, a research organization that works with businesses on issues relating to women's advancement in the labor force, conducted case studies of leave-taking employees regarding family and medical leave. The purpose of these interviews was to provide some qualitative data to enrich and to personalize the quantitative information the Commission gathered through its two national scientific surveys.

A total of four case studies of leave-takers was included in Catalyst's report to the Commission. All four interviewees were employed by firms located in the Northeast. The leave-takers included two female managers at a pharmaceutical company who used the FMLA to extend their maternity leaves, a female professional in the finance department of a pharmaceutical company who used the FMLA to extend her maternity leave and a male professional at an insurance company who used the FMLA to care for his dying mother.

e. Westat Embedded Employee Survey

In addition to the Employer Survey, Westat also conducted an "embedded" Employee Survey, focusing on a non-random sample of leave-takers from the firms of respondents to the Employer Survey. Leave-taking employees were selected for the embedded survey through a random process initiated by their employers. When the total number of the respondent's leave-taking employees was low (ten, for example), all leave-taking employees were included in the sample. When the total number of respondent's leave-taking employees was high (100, for example), a random process was used to select which of the leave-taking employees would be asked to participate. The contact person of the employing organization was asked to distribute the questionnaires to the leave-taking employees chosen, who then were asked to return the questionnaires directly to Westat in a postage-paid envelope.

The "embedded" Employee Survey includes questions similar to those in the Employee Survey, such as reason and length of leave, benefits lost, the employee's method of covering for lost wages, the nature of the position to which the employee returned and the way in which work was covered during the employee's absence. The questions also seek information about the employee's attitudes toward and knowledge of family and medical leave.

Westat staff advised the Commission that, due to the low response rate they got to this survey, as well as the non-representative nature of the sample, the data should only be used as a supplement to the Employee Survey data set. It is not possible to generalize the findings from the embedded survey to the population of U.S. employed persons.

f. Literature Review on Wage Replacement Policies

One of the eight questions which the Commission was mandated to study under the FMLA was "the impact on employers and employees of policies that provide temporary wage replacement during periods of family and medical leave." As the FMLA is an unpaid leave law, the Commission needed assistance in assessing existing voluntary paid leave policies. The Commission contracted with researchers at the Radcliffe Public Policy Institute in Cambridge, Massachusetts to prepare a "white paper" on wage replacement. The paper contains a literature review and a comparative analysis of wage replacement policies found in other countries. It concludes with a summary of issues and policy considerations, and recommendations for future research.

F. National Academy of Sciences Workshop

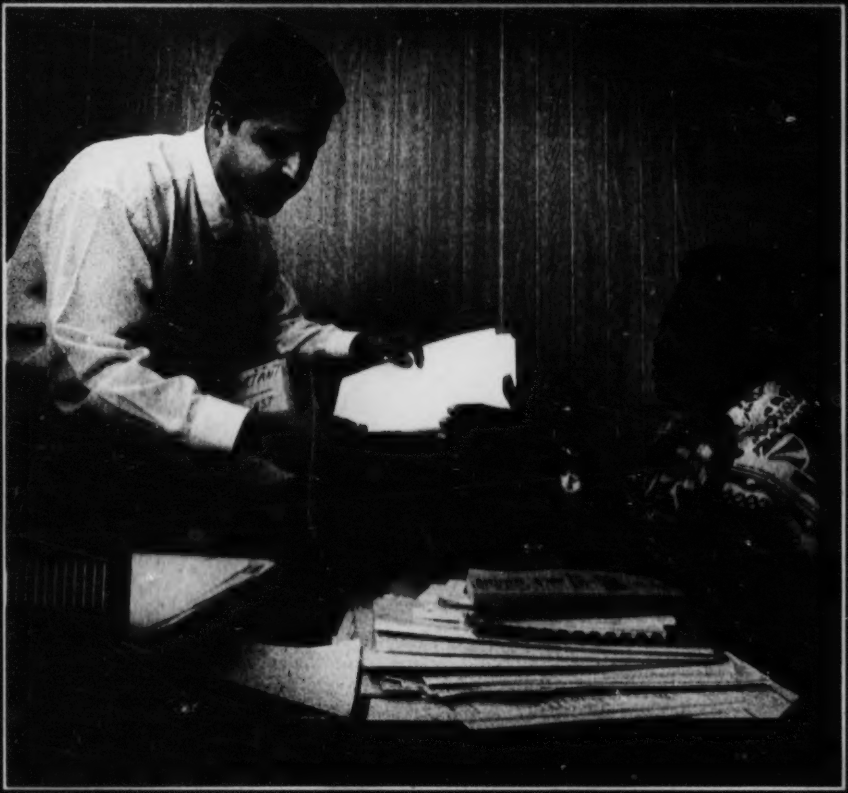
In order to assist the Commission with its review and interpretation of the new data collected from the Employee Survey and the Employer Survey, the Commission consulted the Board on Children and Families, which offered to convene a group of experts to provide an impartial discussion of the data. Created in 1993 under the joint auspices of the National Research Council's Commission on Behavioral and Social Sciences and Education (CBASSE) and the Institute of Medicine (IOM), the Board on Children and Families provides a national focal point for the nonpartisan analysis of child and family issues that center on policy decisions. Through this dual affiliation within the Academy complex (CBASSE/IOM), the Board works to synthesize the views of health professionals and those working in the social and behavioral sciences in the analysis of child and family issues.

On October 23 and 24, 1995, the Board held a one-and-a-half day workshop that brought members of the Commission together with research, business and policy experts on family leave issues to provide an informed discussion of the new data. The principal investigators from the Employer Survey and Employee Survey presented an overview of their findings. Participants were able to ask questions and offer their responses to the findings. The workshop format consisted of three panels - each with a lead presenter and two discussants. The first panel focused on costs and benefits to employers. The second panel focused on costs and benefits to families. The third panel discussed directions for future research. The panelists were asked to reflect on the new data from their own disciplinary perspective, and to offer suggestions about additional analysis needed for the Commission's final report. Brief presentations were followed by discussion among participants including Commissioners, panelists and invited guests, selected on the basis of their expertise on and practical experience with the issues under discussion.

G. Summary

As a result of these research efforts, the Commission now has new data which together help to provide comprehensive answers to all the mandated questions posed by Congress. Two new national scientific data sets provide important information concerning the costs and benefits of family and medical leave policies, and the FMLA, to both employers and employees. Public hearings were held in different sites across the country to hear directly from workers and employers about their experiences with family and medical leave policies, and the FMLA. An array of research organizations with expertise in family leave issues assisted the Commission in its research.

The National Archives will house the records of the Commission. These records will include all reports submitted to the Commission, as well as transcripts from public hearings, transcripts from the National Academy of Sciences workshop and transcripts of all the Commission meetings. In addition, copies of the data sets collected by University of Michigan and Westat will be housed in the Office of Compensation and Working Conditions at the Bureau of Labor Statistics.



CHAPTER III.

Overview of Leave Policies Prior to the Passage of the Family and Medical Leave Act

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A. Voluntary Leave Policies

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1. Types of Voluntary Leave Policies

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benefits field as employers try to accommodate the needs of a rapidly changing workforce. This has meant that the type and prevalence of leave has been changing and expanding over the last decade - especially in the five years immediately preceding the passage of the FMLA - making it difficult to keep track of the leave policies of particular companies, no less the leave policies of firms in broader size and industry groupings.

The best source of information on voluntary employer leave policies before the FMLA are the routine surveys conducted by the Bureau of Labor Statistics (BLS) called the Employee Benefits Survey (EBS).[1] The survey provides data on the availability of maternity leave, paternity leave and sick leave.[2] These surveys alternately cover small (fewer than 100 employees) and medium/large (with 100 employees or more) employers, and are based on representative samples for all private sector, non-farm establishments. Additionally, these data are combined in two-year increments in order to give an overall picture of access to leave for employees regardless of the size of firm for which they work.

Aggregated data is available for the two years prior to the passage of the Family and Medical Leave Act. For the years 1992 to 1993, the EBS combined information on all employees in private and public sector establishments of all sizes. At that time, 37 percent of all employees had access to unpaid maternity leave and 28 percent had paternity leave.[3] Paid parental leave was very rare, with only two percent of employees having access to paid maternity leave, and only one percent having access to paid paternity leave.

The Employee Benefits Survey shows that paid sick leave was much more common than paid parental leave. According to the 1992-93 data for all private and public sector employees, 56 percent of all employees had access to paid sick leave.

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[1] Before 1993, the EBS provided data on some, but not all, of the components of family and medical leave. The survey was revised at the end of 1993 to reflect the new provisions of the FMLA. Before 1993, the survey collected information on fully paid, partially paid, and unpaid days of paternity and maternity leave. The current survey tabulates paid and unpaid parental leave separately, and asks if leave may be used for the birth of a child, adoption of a child, to care for a sick child, or to care for a sick adult relative. See "BLS Employee Benefits Survey Revised to Account for New Family Leave Law," *Daily Labor Report*, January 7, 1993).

[2] The EBS survey defines parental leave as unpaid or paid maternity and paternity leave for a mother or father to care for a newborn/adopted child. It does not include maternity disability leave used for disability preceding pregnancy and childbirth. These provisions are separate from an employee's other leave plans such as sick leave and paid vacation, which might also be used to care for a newborn child. The parental leave described in the EBS is job-protected but continuation of benefits during leave is not guaranteed.

[3] For private sector establishments, there were very similar percentages: 34 percent of employees had maternity leave and 26 percent had paternity leave. However, in the public sector (state and local governments), 58 percent of workers had [illegible] maternity leave and 42 percent had paternity leave.

Interesting differences in access to parental and sick leave policies were evident depending on size of firm and employees' occupations. For example, the 1993 Employee Benefits Survey of medium and large firms shows that 59 percent of full-time employees were eligible for unpaid maternity leave and 52 percent were eligible to take unpaid paternity leave.[4] In contrast, for employees working in small establishments, 18 percent had unpaid maternity leave, and only eight percent had unpaid paternity leave.[5] In both small and larger establishments, paid maternity or paternity leave was very rare; only between one and three percent of employees had access to such a policy. The EBS further found that the length of time employers permitted their workers to take parental leave varied quite a bit by size of establishment, with smaller establishments offering less time off for these types of leave.[6]

In medium to large establishments, professional and technical workers had a slightly higher level of access to unpaid parental leave[7] (63 percent had access to unpaid maternity leave, while 55 percent had access to unpaid paternity leave) than clerical and sales workers (60 percent had access to maternity leave and 51 percent had access to paternity leave) or blue-collar and service workers (59 percent had accesss to maternity leave and 52 percent had access to paternity leave). Access to parental leave by occupational group was more varied in smaller establishments. According to the 1992 EBS on small establishments, 27 percent of professional and technical workers had unpaid maternity leave available to them as opposed to only 13 percent of blue-collar and service employees, and 20 percent of clerical and sales employees. Unpaid paternity leave was available to 13 percent of professional and technical workers in small establishments, while only six percent of blue-collar and service workers, and nine percent of clerical and sales employees in small establishments had access to unpaid paternity leave.

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[4] Bureau of Labor Statistics, *Employee Benefits in Medium and Large Private Establishments, 1993* (Washington, DC: U.S. Department of Labor, November 1994), Bulletin No. 2456, p. 22.

[5] Bureau of Labor Statistics, *Employee Benefits in Small Private Establishments, 1992* (Washington, DC: U.S. Department of Labor, May 1994), Bulletin No. 2441, p. 5.

[6] In medium to large firms, the maximum allowable length of leave averaged 4.3 months. For small establishments the average maximum allowable length of leave was 3.5 months. Differences in length of maternity leave by size of worksite were evident as well. In medium and large firms, 15 percent of employees had access to fewer than two months; an additional 41 percent of employees had leave that was more than two months and up to three months. In contrast, 37 percent of employees in small firms only had access to fewer than two months and an additional 25 percent had leave that was two to three months. For paternity leave, the permitted time off was shorter than maternity leave in medium, large and small firms; just over half had fewer than three months off.

[7] Includes plans providing maternity leave only, paternity leave only and both maternity and paternity leave.

The Employee Benefits Survey data concerning the availability of sick leave provisions also showed differences in coverage by size of establishment and occupation. According to the 1993 EBS, which covers medium and large establishments, 65 percent of full-time employees had access to a specified number of paid sick days per year.[8] However, 53 percent of all employees in small establishments had paid sick leave. Annual sick days were available to more professional and technical employees in larger establishments (85 percent) than clerical and sales employees (80 percent) and blue-collar and service employees (45 percent).[9] This pattern of access to paid sick leave held true for smaller establishments as well, where 74 percent of professionals, 70 percent of clerical and sales workers and 35 percent of blue-collar and service employees had paid sick leave.[10]

There are also studies on pre-FMLA voluntary leave policies conducted by business trade associations, industry-based membership associations and human resources consulting firms. While these studies provided useful insights into the policies of particular subgroups of firms, usually the response rates were low and the samples, especially those conducted with membership lists, were not representative of comparable private-sector firms in the United States.

For example, in December 1990 the National Association of Wholesalers surveyed its 2,000 direct company members as well as its national association members which represent all wholesale distribution commodity lines. In total 3,460 companies were surveyed. Sixty-six percent of these companies employed fewer than 50 employees. The survey asked if the company offered any kind of policy which permitted employees to take either paid or unpaid leave for the birth or adoption of a child or the care of an ill child, including disability coverage. Fifty-four percent said they did have such a policy.[11]

When the National Foundation of Women Business Owners (NFWBO) surveyed its membership in 1992[12], 84 percent of firms offered one or more benefits to their employees, including 95 percent of those with five employees or more and 59 percent of those with fewer than five employees.[13] In the NFWBO survey, 48 percent offered health benefits, 36 percent offered unpaid family and medical leave opportunities, seven percent offered paid maternity leave and two percent offered paid paternity leave.

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[8] *Employee Benefits Survey*, November 1994, p. 8.

[9] *Employee Benefits Survey*, November 1994, p. 8.

[10] *Employee Benefits Survey*, May 1994, p. 5.

[11] National Association of Wholesalers, *Employee Benefits Survey*, (Washington DC: National Association of Wholesalers, October 1990).

[12] National Foundation for Women Business Owners, *Employee Benefits Offered by Women-Owned Businesses: A Framework for Compassion*, (Washington, DC: The National Foundation for Women Business Owners, 1994).

[13] These businesses represented a portion of the total membership of the National Association of Women Business Owners and are not representative of all women business owners.

As is evident from these brief descriptions of business association surveys, it is difficult to make any generalizations based on their findings. The statistics from government surveys indicate a greater prevalence of some types of family and medical leave, such as parental leave, than the business surveys indicate. By and large, the medium and large companies seemed more likely to have provided family and medical leave and to have provided more comprehensive policies. For full-time workers in those firms, paid sick days were accessible to three-quarters of the workforce, maternity and paternity leave to a little less than two-thirds of the workforce. For workers in small firms or who work part-time, these benefits were less likely, especially parental leave, maternity and paternity leave. Family leave appeared uncommon across firm size categories, but there is so little data available, it is difficult to make an assessment.

2. Job Protection and Continuation of Benefits

In addition to the type and length of family and medical leave, another important aspect of leave policies is whether they include a job-guarantee provision, and if health benefits are continued while the employee is taking leave. The availability of these provisions has implications for employees' ability to actually take advantage of leave policies when they are voluntarily provided. Determining whether companies offered leave with some level of job protection and continuation of health benefits is complicated by how companies define family and medical leave, and by the limited data that has been collected on these elements of leave policies.

Scientific data concerning job guarantees and benefits during leave is found in the U.S. Small Business Administration (SBA) Employee Leave Survey commissioned in 1988.[14] This survey provided representative data from 1,730 businesses on the extent of coverage of family and medical leave, including length of leave, benefits and job guarantees provided during leave and the costs of leave to firms. The survey was a national random sample of firms and looked at leave taken by managers and non-manager employees in firms of various sizes. Data was broken down into four firm size categories, firms with one to 15 employees, 16 to 49, 50 to 99 and 100 employees or more.[15]

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[14] Eileen Trzcinski and William T. Alpert, *Leave Policies in Small Business Findings from the U.S. Small Business Administration Employee Leave Survey*, (Washington, DC: U.S. Small Business Administration, 1990).

The SBA study collected data on job guarantee and continuation of health benefits for three types of leave: a) unpaid sick leave, b) paid sick leave, and c) paid or unpaid maternity leave, defined as leave for pregnancy or childbirth-related disabilities. Data about the incidence of job guarantee and health benefits continuation for parental leave, that is, care of a newborn or newly-adopted child was not collected.

Unpaid sick leave: In the smallest firm size category, almost 40 percent of employers reported providing unpaid sick leave with a job guarantee for employees. The proportion rose to more than 60 percent for all firm sizes greater than 15 employers reaching a maximum of 69.7 percent in the second largest firm size. The same pattern occurred for the continuance of health insurance payments. For example, 26 percent of firms with one to 15 employees continued to pay health insurance during leave. In contrast, almost 62 percent of those firms with 50 to 99 employees offered this provision.

Paid sick leave: Among employers offering paid sick leave, the incidence of job guarantee and continuation of health benefits was smaller than in firms where the leave was unpaid, and this was true among all firm sizes. In particular, in the smallest firm size category, less than one-quarter of employees received paid sick leave with job protection. In firms of 50 to 99, the percentage who offered job protection with paid sick leave rose to 59 percent but was still lower than the 70 percent of firms that offered unpaid leave. Health insurance continuation for employees who received paid sick leave was also lower in all firm size categories than for employees who only had unpaid sick leave.

Paid or unpaid maternity leave: According to the SBA study, very small numbers of firms had separate maternity leave policies.[16] The data show that even when firms offered a separate maternity leave policy, very few provided job guarantees, or health insurance continuance as part of the leave provision. Less than five percent of the smallest firms surveyed offered their employees a separate maternity leave

[15] A random sample of 10,000 firms was obtained from the Small Business Administration's Small Business Data Base which covered 3.8 million businesses and represented 93 percent of private employment in the United States.

[16] Leave for mothers to care for a newborn child.

plan with either a job guarantee or continuance of health insurance while on leave. In the largest firm size category, those with 100 employees or more, only 16.8 percent of firms offered a job guarantee with maternity leave and only 11.4 percent continued to pay health insurance when a leave-taker was away.

In sum, the data show that a substantial percentage of firms (between 35 and 70 percent), who provided sick and maternity leave did so without providing a job guarantee and without providing for health benefit continuation. In most cases, as firm size increased, the likelihood of employees having access to job-protected leave with continuation of health care benefits increased, but was still less than 70 percent. There were no significant differences in the availability of job and health care insurance protections to manager and non-manager employees.

3. Paid and Unpaid Leave Policies

It is difficult to capture an overall picture of what was available before the FMLA in terms of paid leave policies. As was discussed above, several major types of leave are combined in the concept of family and medical leave, and some are traditionally associated with wage replacement while others are not. In addition, there was little systematic data collection on the national level. Pre-1993 studies varied in quality and showed a range of estimates concerning the availability of paid leave.

This section will review data on three separate types of leave - sick leave, maternity and paternity leave - and look at what was known about wage replacement provisions for these types of leave.[11] Even though estimates of the availability of paid leave vary widely, it is clear that sick leave and maternity leave were the most likely kinds of leave to involve some wage replacement, while leave to take care of newborn children by a mother or father or to take care of an ill family member was paid only very rarely.

Data show that paid sick leave was the most common form of paid leave and was available to most workers. Referred to earlier, the Employee Benefits Survey (EBS), conducted by the Bureau of Labor Statistics, is one of the best sources of information regarding voluntary employer policies. According to the 1993 EBS data, 65 percent of employees were allowed a fixed number of sick days per year. (Sick leave usually provides 100 percent of a worker's normal earnings for a fixed period of time.) The survey also shows that professional employees were slightly more likely than clerical and sales employees to have paid sick leave and twice as likely as blue-collar and service employees to have paid sick leave provisions.[18] For example, in 1989-90, 78 percent of white-collar, private-sector employees had paid sick leave compared with 36 percent of blue-collar workers.[19]

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[11] This subsection uses the same definitions for these leave categories as the Employee Benefits Survey (EBS). Maternity and paternity leave is time off for mothers or fathers to care for a newborn or adopted child. Maternity leave does not include time off for childbirth or pregnancy-related disabilities.

Consistent estimates of the provision of paid time-off for pregnancy and maternity leave are hard to find. For example, a 1987 study of 357 firms conducted by the American Society of Personnel Administrators found that 65 percent of responding companies had some sort of formal maternity leave, of which five percent offered paid leave.[20] Similarly, another study found that two percent of companies with fewer than 100 employees offered paid maternity leave, compared with three percent of firms with 100 employees or more.[21] In contrast, a large survey conducted by the National Conference of Jewish Women, covering almost 4,000 firms of different sizes, found that 38 percent of those respondents who had formal leave policies said they offered some sort of wage replacement.[22] Finally, a benefits survey conducted by the U.S. Chamber of Commerce in 1985 found that among the smaller and medium-sized companies in its sample, only 19 percent claimed to have formal pregnancy or maternal leave plans, and, of that 19 percent, about a quarter stated that the leave was paid.[23]

Information concerning the number of employees who were covered by paid maternity leave also showed low levels of coverage. The Bureau of Labor Statistics reports that in 1991 and 1992 paid maternity leave was available to one percent of all employees, two percent of private sector employees, one percent of public sector workers, two percent of full-time employees and less than one percent of part-time employees. Paid paternity leave was also only available to a small percentage of workers.[24] To the extent that it is possible to generalize across the public and private sectors, it appears that paid maternity leave was more available to employees with relatively high levels of skills and incomes. In 1993, only one percent of full-time blue-collar and service employees in medium and large establishments had access to paid maternity leave compared with four percent of professional and administrative employees.[25]

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[18] *Employee Benefits Survey*, November, 1994, p. 8.

[19] Bureau of Labor Statistics, *Employee Benefits Survey: A BLS Reader*, (Washington, DC: U.S Department of Labor, 1995), p. 14, Table 1.

[20] American Society of Personnel Administrators, *The Resource Survey of Membership*, (Alexandria, VA: American Society of Personnel Administrators, 1987).

[21] Cynthia Costello and Anne Stone, Ed.s, *The American Woman 1994-1995*, (New York: Norton, 1994).

[22] National Council on Jewish Women, Center for the Child, *Medical and Family Leave: Benefits Available to Female Workers in the United States* (New York: National Council of Jewish Women, 1987).

[23] U.S. Chamber of Commerce, *1985 Employee Benefits Survey*, (Washington, DC: U.S. Chamber of Commerce Research Center, Economic Policy Division, 1986).

[24] Ann C. Foster, "Employee Benefits in the United States, 1991-92" in *Employee Benefits Survey: A BLS Reader*, (Washington DC: U.S. Department of Labor, 1995), p. 9.

In sum, maternity leave and leave for personal illness were the most likely types of leave to be accompanied by at least some wage replacement. Full wage replacement was offered most commonly for sick leave, while fully-paid maternity leave was available to a very small number of employees. It also seems that employees with higher skill and income levels had greater access to paid leave policies. Paying employees while they were on leave to take care of sick family members was rare even among the largest and most "family-friendly" companies.

4. Costs, Cost Savings and Benefits

Many of the studies assessing the costs and benefits of providing voluntary leave policies were based on the experience of single companies or the members of an industry sub-group. However, the Small Business Administration survey described above, which was based on a nationally representative sample of firms, provides useful data on this issue.[26]

In the SBA study, firms reported that the cost of covering for a worker on leave was roughly equal to the sum of wages and benefits of the worker on leave. Differences in cost by firm size were not statistically significant. The SBA survey also found that these leave policies had an overall cost savings effect for firms, because termination rates were substantially lower for firms providing job-guaranteed, unpaid medical leave.

The National Federation of Independent Businesses (NFIB) commissioned a study of small businesses.[27] Utilizing data collected by Gallup in 1991 from a random sample of NFIB's membership of 600,000 businesses, stratified to insure representation of larger employers, the study found that workers would bear the brunt of changes if family and medical leave legislation were enacted because costs would be passed on to them. It was projected that such a law would also reduce the number of jobs for low-skilled workers, and employers would be more reluctant to hire women, especially of childbearing age. NFIB concluded that employers would view a federal family and medical leave standard as increasing the cost of women employees relative to men, and that employers would pay women less, or hire fewer women as a result.

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[25] *Employee Benefits Survey*, November 1994, p. 8.

[26] For a full description of the SBA sample, please see section 2, Job Protection and Continuation of Benefits.

[27] Steven W. Barnett and Gerald L. Musgrave, *The Economic Impact of Mandated Family Leave on Small Businesses and Their Employees*, (Washington, DC: The National Federation of Independent Businesses Survey, 1991).

In contrast, most other studies on cost supported the thrust of the SBA study. In January 1993, Hewitt Associates, a consulting firm, surveyed 524 benefits managers about their companies' experience with family and medical leave (and their reaction to the anticipated passage of FMLA law).[28] The companies in this survey were large; 96 percent had more than 500 employees. The survey found that the majority of companies already had some type of unpaid family or medical leave policy in place. Sixty percent indicated that less than one percent of their employees took unpaid family or medical leave in a year, typically for less than 12 weeks. Seventy percent perceived the cost of providing leave as insignificant, and the benefits of providing leave included creating goodwill (93 percent), boosting morale (59 percent) and decreasing turnover (54 percent). Companies had concerns that once FMLA was enacted, paid leave would be the next step (64 percent), and they were also concerned about the cost of continuing health insurance (46 percent) and covering the work of employees on leave (44 percent).

In March 1993, Towers Perrin conducted a survey of its readership, including 701 medium and large employers from 44 states, 69 percent of whom offered some form of family and medical leave voluntarily.[29] Over 90 percent of the employers who offered some form of family leave said costs of providing family and medical leave were not significant, even though 50 percent continued health benefits while employees were on leave. Most employers found that providing leave brought about benefits to their companies. Almost all (97 percent) said their leave program had met key objectives. It had improved employee morale, enhanced loyalty to the company and improved the retention rate of experienced employees.

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[28] Hewitt Associates, "Employer Response to Family and Medical Leave Legislation," *On Employee Benefits* (Lincolnshire, IL: Hewitt Associates, February, 1993).

[29] Towers Perrin, *Family and Medical Leave Programs Before and After the New Federal Law* (New York: Towers Perrin, July, 1993). Although 69 percent said they had family and medical leave policies, only 15 percent said they were already in compliance with the proposed federal statute.

In a state-level study on parental leave,[90] the Families and Work Institute found that the majority of employers reported no increase in cost for training (71 percent), administration (55 percent), health insurance costs (73 percent) or unemployment insurance (81 percent) related to compliance with legislation. Only a small minority reported significant cost increases in training (four percent), administration (six percent), or unemployment insurance (two percent). "On closer analysis the employer perception of these increased costs, reflect, in part, general cost increases, rather than new costs associated with leave statutes."[91]

Data on the experience of AEtna Life Insurance Company, collected by the consulting firm Work/Family Directions, shows that there were quantifiable benefits for the company starting from the time the company introduced a family-leave policy in 1987. AEtna offered parental and family leave of up to six months, including benefits, but without pay. It found that the return rate for women after childbirth jumped from 77 percent in 1986 to between 88 and 91 percent in the five years following their maternity leave. By allowing employees to meet both work and family demands, AEtna found that its employees were less stressed, which in turn lowered company health care costs and increased productivity.[92]

B. State Statutes

By the time of the enactment of FMLA, thirty-four states, Puerto Rico and Washington, D.C., had enacted some type of maternity/family leave law. Sources show the diversity of state level initiatives - most more narrow in coverage than the proposed federal statute, and some broader - as well as how the earlier laws enacted differed from those enacted closer to the passage of FMLA itself. Pressures to provide such job protections had been building in a number of states, leading to enactment of these laws.

The most complete information on state laws is found in the Women's Legal Defense Fund's publication, *State Laws and Regulations Guaranteeing Employees Their*

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[90] John T. Bond, Ellen Galinsky, et al., *Beyond the Parental Leave Debate: The Impact of Laws in Four States* (New York: Families and Work Institute, 1991). Only one of the four states included in the study had a leave law coextensive with the FMLA.

[91] Ibid. Executive Summary, p. iii.

[92] Work Family Directions, *Recommitting the Work Force: Maximizing Employee Contribution in an Environment of Constant Change* (Boston: Work/Family Direction, Inc., 1993) p. 43.

Jobs After Family and Medical Leaves,[33] and the Women's Bureau's 1993 publication *State Maternity and Family Leave Law*.[34]

1. Provisions of State Leave Laws[35]

By early 1993, twenty-three states had leave laws covering both private and state employees, while in 11 the law only covered state workers. The early state statutes provided leave primarily for pregnancy and childbirth, but in later statutes the reasons for leave were broadened to include care of newborn and newly-adopted infants, elderly parents or other relatives.

The amount of leave a worker could take varied widely in state law - from 16 hours to one year. Some states only required a "reasonable period," while in others the amount was not specified. Eligibility requirements, related to number of hours worked and length of service, also varied. In most cases, employees were eligible for leave when they had worked full-time for a year without a break in service. However, there were states that allowed much lower levels of hours and service and still provided leave benefits. For example, Colorado's leave law covered both state and private sector employees and there was no length of service requirement. And in Oklahoma, a state employee only had to have six months of continuous service to be eligible to take family leave.[36]

Most of the laws exempted small businesses, but "small" was defined in a variety of ways. In three states the threshold for covered employers was set high - including only companies with more than 100 employees - while in Colorado and Montana companies with just one employee were covered. Firm size exemptions tended to be the lowest in states with very narrowly specified leave laws.[37] States also adopted different policies concerning the utilization of other types of leave, such as sick leave, to provide pay for unpaid family leave. The definitions of "family," which affected the number of relatives covered by family leave provisions, also varied state-by-state. There were further differences regarding the continuation of benefits, particularly health insurance. In Vermont and Rhode Island, for example, employees were entitled to the same or comparable jobs, at the same level of compensation, employment benefits and seniority when they returned to work, and the employer was required to continue health benefits. However, in Minnesota employers were not required to pay the cost of insurance or health care during leave, and in Oregon, unless otherwise specified under an agreement between the employer and the employee, a collective bargaining agreement, or an employer policy, benefits were not required to continue during the leave.

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[33] Women's Legal Defense Fund. *State Laws and Regulations Guaranteeing Employees Their Jobs After Family and Medical Leaves*. (Washington, DC: Women's Legal Defense Fund, 1993).

[34] Women's Bureau, U.S. Department of Labor. *State Maternity/Family Leave Law*. (Washington, DC: U.S. Department of Labor, June, 1993).

[35] The discussion of state statutes in this section covers the pre-FMLA period; however, these statutes still exist today and the FMLA statute specifies that more generous state laws cannot be superseded by the provisions of the FMLA.

[36] Ibid.

[37] Eileen Trzcinski, "The Use and Abuse of Neoclassical Theory in the Political Arena: The Example of Family and Medical Leave in the United States," in *Out of the Margin: Feminist Perspectives on Economics*, Edith Kuiper and Julan Sap. (London: Routledge, 1993), p. 233.

2. Provisions of State Temporary Disability Insurance Laws

In 1978, an amendment to Title VII of the Civil Rights Act was passed called the Pregnancy Discrimination Act (PDA). It required employers to treat the disability of an employee resulting from pregnancy or childbirth in the same manner as they would treat any other disability. The PDA further specified that if an employer voluntarily provided temporary disability leave, they must allow employees to use this leave for pregnancy or childbirth-related disabilities. However, this only affected those employees whose companies already voluntarily provided this type of leave.

Five states (New York, New Jersey, Rhode Island, California and Hawaii)[18] and Puerto Rico had their own Temporary Disability Insurance laws (TDI) that covered all employers with at least one employee. Employee eligibility for these plans varied from state to state. In most cases, an employee must have worked at least 14 to 20 weeks for a covered employer, although in New York employees were only required to have worked four consecutive weeks to be eligible for TDI.[19] These laws provided partial salary replacement for any worker with a non-work related disability, including women who had pregnancy- and childbirth-related disabilities. TDI laws complement Workers Compensation (applicable to persons with work-related illnesses and injuries) and Unemployment Compensation (applicable to persons who are laid-off and available for work).

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[18] It should be noted that approximately 20 percent of the U.S. population resides in New York, New Jersey and California (according to 1995 Census Bureau population data).

[19] Institute for Women's Policy Research, *Research in Brief: What is Temporary Disability Insurance?* (Washington, DC: Institute for Women's Policy Research, May 1993).

These state laws have extended the universe of employees who have access to paid parental leave, however, they did not provide for job reinstatement. Wage replacement rates were based on the employee's salary, although minimum and maximum benefit levels were set in all the states. The percentage of salary paid varied from 50 to 65 percent of an employee's weekly wages, and the duration of disability pay varied from 26 to 52 weeks.[40] Data from a 1989 study by the Institute for Women's Policy Research showed that the average duration of claims was between five and 13 weeks and the average weekly benefit to employees was between $170 and $200.[41] TDI programs operated (and continue to operate) in the black, generally with low overhead rates. The research also indicates that TDI plans covered a wide range of workers at a relatively low cost for both employers and employees.[42]

3. Impact of State Laws on Employers and Employees

Several studies attempted to evaluate the impact of state family and medical leave mandates pre-FMLA. For example, in 1988, the Families and Work Institute (FWI) conducted a state level study called "Beyond the Parental Leave Debate: The Impact of Laws in Four States,"[43] with random samples of employers and employees in four states that had enacted their own parental leave laws two to three years before data collection: Minnesota, Oregon, Rhode Island and Wisconsin. Apart from the leave policies in the four states, Rhode Island also had mandated wage replacement by TDI coverage for most employees.

The survey found that the majority of the employers surveyed reported "no increases" in the cost of training (71 percent), administration (55 percent), health insurance costs (73 percent) or unemployment insurance (81 percent) because of compliance with the state legislation. The survey also found that the state legislation in the four states had no effect on the proportion of mothers taking maternity leave (78.6 percent took leave before the enactment and 78.4 percent after the enactment) or on the length of such leave (12.6 weeks before and 12.1 weeks after). Also, lower-income women tended to take shorter leaves. But in Rhode Island, which also provided partial wage replacement, the proportion of women in low-income households who took less than six weeks of leave fell to zero percent after enactment of the legislation in July 1990, compared with 19 percent of lower-income women who took less than six weeks in the other three states studied. Leave taken by fathers for newborns increased slightly after enactment of the laws (from 70 percent before to 75 percent after), and the amount of leave they took also increased slightly (3.7 days before to 4.7 days after).

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[40] Women's Bureau, *State Maternity/Family Leave Law.*

[41] Institute for Women's Policy Research, *Research in Brief: What is Temporary Disability Insurance?*

[42] More recent research by the Institute for Women's Policy Research which estimates the cost of replicating TDI plans in five additional states modelling several different levels of eligibility requirements and benefits confirms that TDI plans are cost-effective. See Institute for Women's Policy Research, *Expanding Social Insurance to Include Paid Family Care Leaves,* (Washington, DC: Institute for Women's Policy Research, 1995).

[43] Bond, Galinsky, et al.

Several other studies have attempted to evaluate the impact of leave statutes in a single state. For example, the New Jersey Business and Industry Association conducted a survey of 200 of its members to assess the costs related to New Jersey's family leave law.[44] Sixty-five percent of the respondents were employers with fewer than 500 employees. In about half the firms, less than one percent of the employees were on leave, and another 40 percent had one to three percent of their employees on leave. This study also pointed out the low cost of implementing leave policies and found a low level of post-leave turnover, which employers viewed as a positive.

The Institute of Industrial Relations at the University of California at Berkeley and William M. Mercer, Inc., an international benefits consulting firm, conducted a survey from Mercer's client list to assess employer experience with the California leave law and the potential impact of FMLA.[45] They obtained 299 responses (a 30.5 percent response rate). Two-thirds of the employers said that less than one percent of their workers had taken leave under the California law, while only 6.7 percent reported utilization rates of more than two percent. More than half the respondents reported that costs associated with the mandated state law were insignificant, only seven percent reported moderate to major costs.

C. Employee Utilization and Experience

Again, there are a small number of statistically valid data sources on employee utilization. The best sources appear to be government surveys, such as the Employee Benefits Survey and the Small Business Administration survey, and two studies based on secondary data analysis of representative longitudinal data sets. There is, in addition, a nationally representative survey of employees done by the

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[44] M. H. [illegible], *Costing State Family Leave Legislation: The Case of New Jersey Small Business* (unpublished manuscript, Rutherford, NJ: Fairleigh Dickinson University, August 1993).

[45] William M. Mercer, Inc. and University of California, Berkeley, *Survey Results: Family and Medical Leave Act* (San Francisco, CA and Berkeley, CA: William M. Mercer, Inc. and University of California, 1994).

Families and Work Institute called the "National Study of the Changing Work Force." Each of these illuminates an important aspect of employees' experience with leave before the FMLA.

1. Extent of Employee Utilization of Leave

As discussed earlier, in 1988 the Small Business Administration[46] conducted a random sample survey of firms that covered nearly five million establishments, and represented 93 percent of private employment in the U.S. Findings included a higher incidence of family and medical leave utilization in the following types of firms: firms with a formal unpaid leave policy; firms that included pay or continuation of health benefits during leave; and firms with a higher proportion of female workers between the ages of 14 and 44, or workers 55 or older. In the 12 months prior to the survey, less than one percent of employees had taken parental leave - 0.73 percent of managers and 0.34 percent of non-managers. Non-managers were more likely than managers to take leave that was unpaid. Industry, firm size and sales volume were not found to affect the amount of leave-taking.

In 1990, the Bush Center in Child Development and Social Policy at Yale University commissioned a study by Trzcinski and Stevenson to evaluate employees' utilization of leave in the state of Connecticut.[47] This study surveyed 1,900 Connecticut firms about the extent of parental leave-taking among their employees. The main finding was that the level of utilization of leave was low - between one percent and three percent of employees for maternity and similar rates for disability leave. In firms with fewer than 50 employees, utilization of maternity leave was the lowest, at 1.3 percent, while only two percent of employees used sick leave. The highest rate of maternity leave utilization was in firms of 100 to 499 workers, where 2.6 percent of employees used this leave, and 2.8 percent used sick leave. For the largest firms (more than 500 workers), 2.2 percent of employees took maternity leave and 2.7 percent used sick leave. A 1993 survey of family leave policies among readers of the Towers Perrin Monitor, described above (see part 4 of section A), also focused on utilization.[48] The survey found that the level of utilization of leave was low. Over half the firms offering leave found they had fewer than ten leave-takers per year, and 20 percent of the firms had fewer than two leave-takers. Eighty-five percent of the leave-takers were women, and childbirth was by far the most common reason for taking leave.

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[46] Trzcinski and Alpert.

[47] Eileen Trzcinski and M. Finn-Stevenson, "A response to Arguments Against Parental Leave: Findings From the Connecticut Survey of Parental Leave Policies," *Journal of Marriage and Family*, Vol 52:3, pp. 445-60.

[48] Towers Perrin, *Family and Medical Leave Programs: Before and After the New Federal Law* (New York: Towers Perrin, July 1993).

2. Differences in Employee Access to Leave

The "National Study of the Changing Workforce," conducted by the Families and Work Institute, is scheduled to be done every four years. The first survey was conducted in 1992 based on a nationally representative sample of almost 3,000 wage and salaried workers, in addition to self-employed workers and women who were voluntarily out of the paid workforce raising children. The findings from this survey which are relevant to leave utilization show that about 45 percent of employees were eligible for family and medical leave at the time data was collected.

The survey found some important differences in access among different groups of employees. For example, men had greater access to leave than women; older workers had greater access than younger workers; better educated workers had greater access than less educated workers; and workers in professional and managerial occupations had greater access than other workers. In a paper discussing these findings,[49] report co-author James T. Bond offers a variety of explanations related to the ways in which the labor market is structured around differential rewards to employees on the basis of gender, education, skill and so on.

Similar findings have been reported by the authors of the 1990 National Child Care Survey.[50] They reported that lower-income individuals were less likely to take parental leave, were less likely to be paid during their periods of leave and were less likely to keep their health insurance during leave than workers with higher incomes.

3. Gender and the Economic Impact of Leave

Several studies have attempted to evaluate the particular effect of leave policies on women workers, given that women are the bearers of children and still the primary caretakers of children, elders and other family members.

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[49] James T. Bond, *Access to Leave Benefits Under the Family and Medical Leave Act of 1993*, unpublished paper (New York: Families and Work Institute, April 1995).

[50] S. L. Hofferth, et al., *National Child Care Survey, 1990* (Washington, DC: Urban Institute Press, 1990) Report 91-5.

A 1987 study by the National Council for Jewish Women found that women whose employers offered parental leave and other personal and family accommodations were more satisfied with their jobs, took fewer sick days and were more likely to return to their jobs than other workers without access to such policies.[51] Additional analyses of these data showed that particular policies such as health insurance, paid sick days and job-protected leave all had a positive effect on how long pregnant women remained at work, their plans to return to work and job satisfaction. For example, 80 percent of women with paid sick leave days worked into their ninth month of pregnancy compared with 52 percent of women without such a benefit. And those who had job-protected leave stopped work later and planned to return to work sooner than those women without job-protected leave.[52]

In 1988, the Institute for Women's Policy Research (IWPR) conducted a study using data from a longitudinal study by the Institute for Social Research, University of Michigan (1974 to 1988 Panel Study of Income Dynamics). The sample of nearly 7,000 households provides annual data on labor force participation, hours worked, absences from work, earnings, other sources of income and basic demographic information. IWPR looked at the costs to workers of not having family and medical leave and found that the cost to women was indeed high.[53] Specifically, they estimated that employed women who did not have some form of leave beyond vacation days, had substantially lower annual earnings when they returned to work after childbirth or adoption compared with women who had leave. For example, in the three-year period after childbirth, women who did not have leave lost an estimated $9,279 compared with a loss of $8,191 for women who had leave. These additional losses occurred because those without any form of leave experienced more unemployment and lower relative wages when they returned to work after childbirth. In addition, IWPR estimated that tax payers paid more than $4 billion annually for programs such as welfare, unemployment compensation, food stamps and Medicaid to support workers who lost jobs because they did not have job-protected family and medical leave.

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[51] National Council for Jewish Women. *Medical and Family Leave: Benefits Available to Female Workers in the United States*. (New York: National Council of Jewish Women, 1987).

[52] National Council for Jewish Women. *The Experience of Childbearing Women in the Workplace: The Impact of Family Friendly Policies and Practices*. (Report prepared for the Women's Bureau, U.S. Department of Labor, February 1993).

[53] Roberta Spalter-Roth and Heidi Hartmann. *Unnecessary Losses: Costs to Americans of the Lack of Family and Medical Leave*. (Washington, DC: Institute for Women's Policy Research, 1988).

Recently Jane Waldfogel, a scholar from Columbia University, used data from the National Longitudinal Study of Youth (NYSL)[54] to investigate the persistent gender gap in pay in both United States and the United Kingdom.[55] This investigation led her to an analysis of differences in work patterns between the genders due to having and caring for children. Waldfogel concluded that there was not simply one factor causing the gender gap in wages. She hypothesized that one-third to one-half of the gap was the result of mothers taking more time out of the labor market and receiving lower returns to work than did other women or men. Job-protected maternity leave was found to have a large positive effect for mothers in both the U.S. and U.K. because it allowed mothers to keep their job while taking needed time away from the workforce. Waldfogel calculated that if women who severed their ties to the paid labor market due to childbirth took job-protected maternity leave in the future, the returns would be substantial. She estimated that it would close an estimated 43 percent of the gender gap for affected women in the U.S. and 37 percent in the U.K.

4. Impact of Leave-Taking on Children and Families

Two important studies focus on the effect of parental leave, (an aspect of family and medical leave), on children and families. These studies were started before the passage of FMLA and are on-going. Over time they will provide a unique opportunity to understand patterns of leave-taking among working families with young children and their impact on family well-being.

The National Institute of Child Health and Development (NICHD) Study of Early Child Care[56] is a ten-site longitudinal study that began in January, 1991. The study is based on a non-random sample of 1,267 children, 53 percent of whom had mothers who planned to go back to work full-time (30+ hours per week), 23 percent of whom had mothers who planned to go back to work part-time (20 to 30 hours per week) and 24 percent of whom had mothers who planned to stay home for the child's first year of life. Children will be assessed at one , six, 15, 24 and 36 months. Although the sample is not representative, it will provide data for examining the impact of different work and leave-taking patterns on children's development and on parents' well-being.[57]

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[54] The NLSY provides a national, representative sample of 12,686 young men and women who were 14 to 22 years of age in 1979 (first survey). This survey has been conducted every year and is useful for data on women taking leave for children and parenting.

[55] Waldfogel found that women earned 88 percent of what men earned at age 21, but only 82 percent by age 30. While women without children earned 95 percent of men's pay at age 30, women with children earned only 75 percent. Jane Waldfogel, *The Family Gap for Young Women in the U.S. and UK: Can Maternity Leave Make a Difference* (Cambridge, MA: Kennedy School of Government, Harvard University, May 1994).

[56] National Institute of Child Health and Human Development, *Study of Early Child Care* (January, 1991 on going).

Finally, the Wisconsin Maternity Leave and Health Project is a longitudinal study of women, their families and the maternity leave experience. Based on a non-representative sample of 570 women and 550 of their husbands/partners, this study's interviews and observations provide extensive demographic information and employment data, as well as data on child development and parent/child interaction.[58] The first wave of data collection took place in 1990-91.

The study found that, on average, mothers took nine weeks of leave and 71 percent of women had-returned to work by 12 weeks. The majority of women (66 percent) said the leave they took was too short, but they could not afford additional unpaid leave. Fathers, on average, took five days off at the time of birth and used vacation or sick days to gain paid leave. The data also showed that short maternity leave (six weeks or less) was a risk factor, when combined with another risk factor, such as a troubled marriage, for elevated levels of depression four months postpartum. Additionally, at four months after birth women who worked full-time showed elevated levels of anxiety compared to those who worked part-time or were full-time homemakers. The authors concluded that this was probably due to role overload.

D. Summary

The picture of family and medical leave policies before the passage of the FMLA is difficult to draw with great accuracy, because systematic data gathering was rare and/or was done only for particular aspects of leave. The best data available - on public and private sector employees across all firm sizes - concerns the provision of sick leave. It was provided to a small majority of employees (56 percent) and was usually paid. There was fairly good data on maternity and paternity leave. Maternity leave was available to about 37 percent of employees and paternity leave to 28 percent of employees. However, data indicated that it was very rarely paid; estimates of wage replacement for this type of leave fell in the one to two percent range. The provisions of job guarantee and continuation of health benefits were common for sick leave, but much less common for maternity, paternity and parental leave, especially for employees in small establishments. Finally, data on family leave was highly anecdotal and the availability of family leave appeared rare.

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[57] A study summarizing the findings to date is due out in the summer of 1996.

[58] Janet Hyde and Marilyn Essex, *Wisconsin Maternity Leave and Health Project, Wisconsin Study of Families and Work*, (University of Wisconsin, 1993).

Overall estimates of employee utilization of leave, other than traditional sick leave, were low, usually in the one to three percent range, although these estimates did not usually differentiate utilization by type of leave. There were few reliable studies of the cost and benefits of voluntary leave policies. Among those companies who did such an evaluation, most reported that costs were low, with the exception of one study, and a few even reported cost savings. Of those employers who reported benefits due to the provision of leave policies, they associated their policies with low turnover (cited several times), good will, enhanced loyalty and morale and increased retention of experienced workers.

State statutes appear to have expanded leave options for some employees, especially in the area of maternity and parental leave. However, even in those states the employee eligibility restrictions and employer exemptions meant that employees in small establishments and those who had short service and/or work part-time were still left without many leave options. Most state leave laws provide for unpaid forms of leave, except for state TDI laws, which provided partial wage replacement for maternity disability leave for biological mothers and disability leave for employees' own temporary disability.

In sum, a minority of employers and states provided all the kinds of leave covered by the FMLA or the degree of job protection and continuation of benefits required by the FMLA. Best estimates suggest that perhaps one-quarter to one-third of full-time private and public sector employees had the kind of leave options provided by the FMLA available to them before 1993, while perhaps less than 20 percent of employees in small establishments had access to these kinds of leave policies. Approximately another third of employees had access to only one or two kinds of leave (sick leave and maternity leave), and usually without pay, continuation of benefits or job protection. In general, the extent of leave available to employees prior to 1993 increased with firm size and for employees with higher levels of skill and income.

CHAPTER IV

Access to Family and Medical Leave Since the Passage of the FMLA: Coverage, Knowledge and Use of the New Law

A. Introduction

1. Data Sources

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Definitions of Employer and Employee Coverage under the FMLA

[illegible]

[illegible]

Only those employers with employees who meet all the Act's employee eligibility requirements are actually involved in providing leave to their employees under the Act. In order to focus the Commission's resources on employers with practical responsibility for eligible workers, the Employer Survey uses the worksite as the unit upon which to base an analysis of employers' and employees' experience under the Act and with family and medical leave policies generally. Specifically, the Employer Survey applies the definition of the DMS file, which defines a worksite as "a single physical location where business is conducted or where services or industrial operations are performed." It should be noted that the Employer Survey, like the DMS, uses the term "business establishment" as a synonym for the single "worksite." Thus, throughout the Employer Survey, the term "business establishment" is intended to refer to a specific work location. In this report, however, the term "worksite" will be used rather than "establishment" and should not be substituted for the word "company," which was not the unit of analysis used in the Employer Survey.

B. New Data on Extent of the FMLA Coverage

1. Coverage of Worksites and Employers

In order to find out which worksites are covered under FMLA, the Employer Survey included two questions. The first question asked how many employees worked at the site. If the answer is at least 50, then the worksite is classified as being covered by the FMLA. If the answer is fewer than 50 employees, then a follow-up question asked how many people worked within a 75-mile radius of the worksite location. If that number was at least 50, then the respondent's worksite is classified as covered under FMLA.

The Employer Survey estimates that 10.8 percent of all private-sector U.S. worksites are covered by the Act (see Table 4.1). This relatively small proportion of U.S. worksites actually employs more than half (59.5 percent) of the nation's private-sector employees, most of whom work for the country's largest employers. Indeed, almost half of the nation's employees work in covered worksites with more than 250 employees, even though those worksites comprise a tiny proportion (4.6 percent) of all covered worksites. Of those employees working for covered employers, 90.2 percent work at the small proportion (39.1 percent) of worksites that employ at least 50 employees, and the remaining 9.8 percent of employees work at

TABLE 4.1

Coverage of Worksites and Employees Under the Family and Medical Leave Act

	Worksites	All Employees
FMLA-covered worksites	10.8%	59.5%
FMLA-non-covered worksites	89.2%	40.5%
Total	100.0%	100.0%
FMLA-COVERED WORKSITES		
Number of Employees at Worksites		
At least 50 employees at worksites	39.1%	90.2%
At least 50 employees within a 75-mile radius of worksite	60.9%	9.8%
50 to 250 employees	95.4%	53.9%
More than 250 employees	4.6%	46.1%
STANDARD INDUSTRIAL CLASSIFICATION		
Manufacturing	9.4%	24.5%
Retail	27.7%	15.7%
Services	26.2%	34.1%
All other industries	36.8%	25.7%

SOURCE: WESTAT INC. TABULATIONS OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

the remaining 60.9 percent of smaller worksites that qualify because of the 75-mile radius rule.

In Table 4.1, which shows FMLA-covered employers by industry (Standard Industrial Classification), industries with the largest worksites, such as manufacturing, also have a large number of employees working in a relatively small percentage of

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covered worksites. Thus, only about 9.4 percent of FMLA-covered worksites are in manufacturing, but those worksites employ 24.5 percent of all employees. One-quarter of FMLA-covered worksites are within the services sector, which employs 34.1 percent of employees. Another 27.7 percent of FMLA-covered worksites, employing 15.7 percent of employees, are in the retail sectors; and the remaining 36.8 percent of worksites are in the residual category.

It should be noted that the demographic profile of employees at large worksites is different in some respects than the demographic profile of employees at small worksites. For example, research shows that larger worksites have somewhat higher numbers of males, African Americans, highly educated employees, union members, and married employees. Smaller worksites have somewhat higher numbers of young employees, women, non-union and less educated employees.[2] Given the fact that employee coverage under the FMLA is based in part on the size of the worksite, these pre-existing differences in the types of workers who tend to work in large and medium versus small firms, is reproduced in the demographics of employee coverage, as discussed below.

2. Extent of Employees' Coverage

This section discusses which employees in the United States are actually eligible to take leave under the Family and Medical Leave Act. Both the Employer Survey and the Employee Survey offer data concerning the extent of employees' FMLA coverage. The Employer Survey provides data based on a sample of all private-sector U.S. employers and their employees. The Employee Survey provides data on a more inclusive sample, consisting of all U.S. employees working in both the private-sector and the public-sector. The inclusion of public sector employees in the Employee Survey sample results in a higher percentage of employees working for covered employers and a higher percentage of employees eligible to take leave under the Act.[3]

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[2] See Charles Brown et. al. *Employers Large and Small*, (Cambridge, MA: Harvard University Press, 1990). Walter Y. Oi, Low Wages and Small Firms in Research in Labor Economics, 1991, Volume 12, pp. 1-39, and especially p. 9, Table 1, and Todd L. Idson, et al., *A Selectivity Model of Employer-Size Wage Differentials*, in *Journal of Labor Economics*, January 1990, Volume 8, Number 1, Part 1, p. 99.

[3] While the Employee Survey numbers are larger than the Employer Survey numbers because of the inclusion of public sector workers, it should be noted that the Employee Survey totals may be slightly inflated for two reasons. First, the Employee Survey data is based on the employed household population with telephones, which means that it is a slightly more affluent group than the total employed population including households with no telephones. As higher income workers tend to work at covered worksites, the number of those working at covered worksites may be slightly elevated. Another reason the Employee Survey data may be inflated is that it includes anyone employed over an 18-month period, while the Employer Survey is based on a single point in time.

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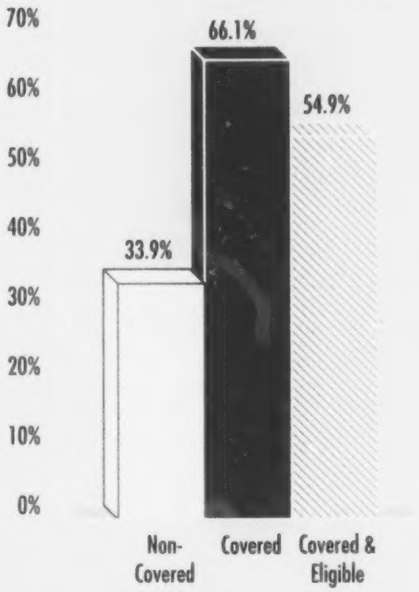
The Employer Survey finds that 59.5 percent of private-sector employees in the U.S. work for covered employers, while the Employee Survey finds that 66.1 percent of employees work for covered employers, including private and public sector worksites. Applying the Act's employee eligibility criteria, the Employer Survey finds that slightly less than one half (46.5 percent) of all private-sector employees are eligible to take leave under the Act[4], compared to slightly more than half (54.9 percent) of all employees eligible to take leave under the Act in the Employee Survey. It is significant that the difference between the fraction of employees in covered worksites and the fraction of employees that are eligible is roughly the same across both surveys - 11 to 13 percent[5] (see Figure 4.1).

FIGURE 4.1

Demographic Profile of Employees by Coverage Status under FMLA



SOURCE: AGUIRRE INTERNATIONAL TABULATIONS OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995

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[4] The question on the Employer Survey used to measure the number of employees eligible for the Act was "How many employees at this location worked at least 1,250 hours for your organization in the past 12 months?" This question is not entirely congruent with the law, which defines employee eligibility as those who have worked at least a year and at least 1,250 hours. The estimates provided above, therefore are slight overestimates of the percent eligible because they include those persons who have worked at least 1,250 hours, but may not have worked at least 12 months for the company. See David Cantor, et al., *The Impact of the Family and Medical Leave Act: A Survey of Employers* (Rockville, MD: Westat, Inc., 1995), p. 3-2.

[5] Findings from a study by the Families and Work Institute, Access to Leave Benefits Under the Family and Medical Leave Act of 1993, reveal the overall number of employees eligible to take leave under the Act to be at the same level as the Employer Survey. Their study was based on a 1992 survey of a national representative sample of 2,958 employees (National Study of the Changing Workforce, discussed in Chapter III).

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3. The Demographics of Employee Coverage

Who are the employees who work for covered employers and who are the employees who can take leave under the Act? Demographic profiles of employees surveyed reveal some interesting differences between those working at covered worksites as compared to those working at sites that are not covered, and clarifies what kinds of employees are most likely to have access to the FMLA on the basis of employee eligibility requirements.

The Employee Survey is based on a nationally representative sample of employed persons 18 and over and thus reflects the demographic profile of the American Workforce (see Table 4.2). For example, men are somewhat more heavily represented in the labor force (and thus in this sample) than women (about 54 percent compared with 46 percent). The largest age group of employees is between 35 and 49 years old. With respect to race and ethnicity, over 80 percent of the sample is white and non-Latino. By far the largest group of employees is married; a majority have no children. Only about eight percent of the employees have less than a high school education, with the remainder roughly evenly distributed in the three higher education categories. Regarding family income, the single largest group is in the category earning between $30,000 and $50,000 a year. About half the employees are hourly workers, and almost 40 percent are salaried. Finally, 16.3 percent of the employees are members of unions.

There are some demographic differences between employees who work at covered and non-covered worksites (See Appendix E, Table 4.A). These differences are largely related to differences in the workforce composition of worksites in different size categories, as discussed above. Those most likely to work at non-covered worksites include the youngest and the oldest employees (those under 25 and over 49 years old), Latinos, employees whose annual family income is less than $20,000, those who are neither salaried nor hourly (that is, who are compensated by piecework rates or commission, for instance) and non-union employees. On the other hand, African Americans and union members are more likely than whites or Latinos or non-union employees to work for covered employers.

Multi-variate analysis regarding the clustering of certain demographic variables and the variable of firm size was presented at the National Academy of Sciences Workshop by the Institute for Social Research Survey Research Center, University of Michigan

TABLE 4.2

Demographic Profile of Employees Sample

ALL RESPONDENTS n=	122,000,000 100.0%
GENDER	
Male	53.7%
Female	46.3%
AGE	
18-24	13.8%
25-34	22.8%
35-49	41.5%
50-64	18.7%
65 or over	3.2%
RACE	
Latino	7.0%
African American	8.8%
Non-Latino White	82.2%
Other	2.0%
MARITAL STATUS	
Married	65.1%
Living w/ Partner	4.0%
Separated	1.5%
Divorced	9.7%
Widowed	2.3%
Never been Married	17.4%
CHILDREN UNDER 18	
None	56.8%
One or more	43.2%
EDUCATION	
Less than High School	7.7%
High School Graduate	29.2%
Some College	28.9%
Four Years of College or more	34.1%
ANNUAL FAMILY INCOME	
Less than $20,000	15.4%
$20–30,000	12.4%
$30–50,000	24.3%
$50–75,000	11.3%
$75,000 or more	11.0%
Unknown	25.5%
COMPENSATION TYPE	
Salaried	37.7%
Hourly	50.9%
Other	11.4%
UNION STATUS	
Union	83.7%
Non-union	16.3%

SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995.

Note: The "unknown" or "no answer" responses accounted for less than 2% of total responses in all catogories except income, where they have been included in the table.

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The Employee Survey also reveals some differences between employees who work for a covered employer, and employees who, in addition, are eligible to take leave under the Act (see Appendix E, Table 4.A). Overall, 66.1 percent of the employees surveyed work at sites that are covered by the FMLA, but only about 54.9 percent are eligible to take advantage of the Act. Women are more likely to work at covered sites, while women and men are almost equally likely to be eligible to take leave under the Act.

Employees between 25 and 49 years old are especially likely to be working for covered employers (about 68 percent), and to be eligible to take leave under the Act (about 60 percent). By contrast, employees in the youngest and oldest age groups (18 to 24 and 65 years or older) are especially unlikely to be eligible (34.4 percent and 40.3 percent).

African American employees are particularly likely to be both covered (81.9 percent) and eligible (74.1 percent), while Latino employees are relatively less likely to be either covered or eligible (59.4 percent and 48.5 percent).

The two largest categories of marital status are "married" and "never married." Interestingly, divorced employees are more likely than married employees to be covered (70.2 percent compared with 65.0 percent) and eligible (61 percent compared with 56.7 percent). However, employees who have never been married are less likely to be both covered and eligible (40.8 percent). (The relatively small number of employees who are "separated" are also especially likely to be covered and eligible.) Those with at least one child under 18 are more likely than those without these dependents to be both covered and eligible (58.3 percent compared with 52.3 percent).

The patterns with respect to education and annual family income are similar. In general, the likelihood of being covered, and of being both covered and eligible, rises as income and education levels increase. Thus, for instance, 47 percent of those with less than a high school education, and only 42.8 percent of employees with less than $20,000 a year in family income, are covered and eligible. This compares with 57.6 percent of those with at least four years of college or more and over 60 percent of those with an annual family income of $30,000 or more, who are covered and eligible.

As to job characteristics, employees who are covered and eligible are more likely to be salaried. For instance, almost 69.3 percent of salaried employees work at a covered worksite, and 61.7 percent are eligible and covered by the Act. By contrast, while 71.3 percent of hourly employees are covered, only 56.5 percent are covered and eligible. Employees compensated in some other way, that is, on the basis of piece work or commission, are far less likely to be covered or eligible than either salaried or hourly employees.

However, unionized employees - who are most likely to be paid by the hour - are far more likely to be covered and to be both covered and eligible than non-union employees. For example, 89.8 percent of unionized employees are covered, compared with 61.7 percent of non-union employees; 81.3 percent of unionized employees are both covered and eligible, compared with just under 50 percent of non-union employees.

In sum, while almost two-thirds of employees work for employers that are covered by the Act, only about 55 percent are both covered and eligible to take leave under the FMLA. Those most likely to work for covered employers are women, 25 to 34 year olds, African Americans, employees who are separated, divorced or widowed, those with at least one child under 18, employees with higher levels of education and income, and unionized employees. The profile of employees who are most likely to be both covered and eligible to take leave under the Act looks similar to those who are covered. The disparity between the extent to which employees are "covered" versus "covered and eligible" is greatest for three subgroups of workers: those 18 to 24 years old, those who have never been married, and those with annual incomes of $20,000 or less.

4. Number of Businesses and Employees Not Covered

Among private-sector worksites in the U.S., 89.2 percent are non-covered, accounting for 40.5 percent of the nation's employees (see Table 4.1). Among the companies in the Census small business sample, which are generally synonymous with worksites, 91.3 percent are non-covered - accounting for 52.8 percent of the employees in that business sector.

C. Changes in Employer Leave Policies Since the FMLA

Chapter III of this report discusses various studies and surveys that assess the nature and extent of voluntary leave policies and state statutes that existed prior to the Act's passage. The Employer Survey did not ask employers questions about their leave policies prior to the Act. It did, however, survey employers about when their organization first established its family and medical leave policies and what changes they have made in their family and medical leave policies since the FMLA was enacted. Consequently, the existing studies of pre-Act policies discussed in Chapter III, combined with the Employer Survey data on the date of starting leave policies and changes in leave policies following the Act's passage, provide a good picture of changes that employers have made in family and medical leave policies as a result of the passage of the FMLA.

1. Extent of Changes in Leave Policies as a Result of the FMLA

The passage of the FMLA has had a substantial impact on employer leave policies. According to the Employer Survey, two-thirds of worksites (66.5 percent) covered by the Act have changed some aspect of their policy in order to comply with the law.[7] In other words, prior to the Act, one-third of covered employers were voluntarily offering leave policies consistent with, or more generous than, the FMLA.

Among those covered worksites that have made changes, the most common change (76.9 percent) is to increase the number of reasons for which employees can take leave (see Figure 4.2). The reason most likely to have been added (made by 69.3 percent) is granting male employees time off to care for seriously ill or newborn children. Another common change (made by 66.4 percent of covered worksites) is allowing leave to be taken for a longer period of time. Over half of the covered worksites that have made changes have done so by making the leave job-guaranteed, and by expanding health insurance benefits (either continuing them during leave, or for a longer period). Almost half of the covered worksites that have made changes (46.7 percent) have eased employee eligibility requirements (see Appendix E, Table 4.B).

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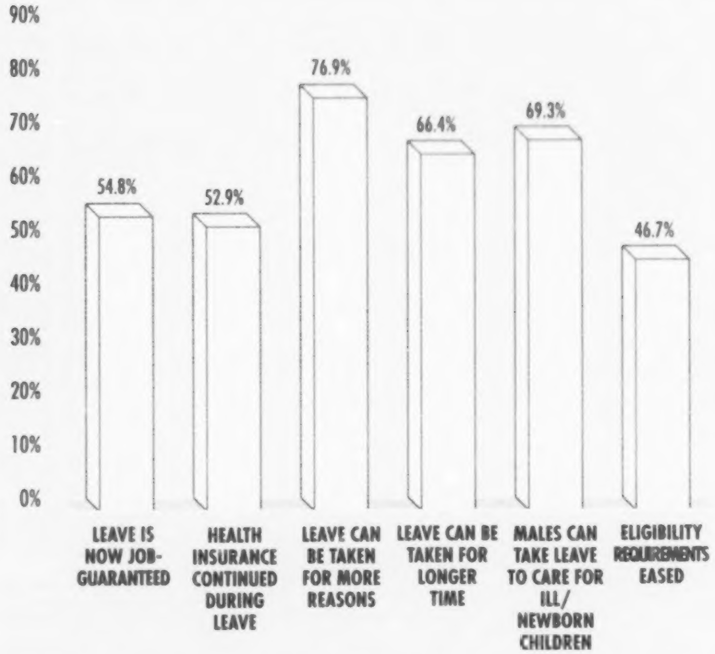
[7] David Cantor, et al., *The Impact of the Family and Medical Leave Act: A Survey of Employers*, (Rockville, MD: Westat, Inc., 1995) p. 4-2.

FIGURE 4.2

Percentage of Worksites Changing Family and Medical Leave Policies by Type of Change[1]



SOURCE: WESTAT INC. TABULATIONS OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

(1) Percentages in table refer to FMLA-covered worksites whose policies changed due to FMLA.

The Census survey[8] finds that among "covered" employers that are privately, not publicly owned 66.4 percent did not have to make leave-related policy or practice changes as a result of the Act.[9] At least one policy change was necessary in 31.7 percent of the covered worksites. Those worksites that made changes did so for the following reasons: 29.6 percent to accommodate fathers' care of newborn children; 26.3 percent for newly-adopted or foster children; 24.0 percent for a seriously ill child, spouse or parent; 19.7 percent for maternity-related issues; and 18.3 percent for personal health conditions.

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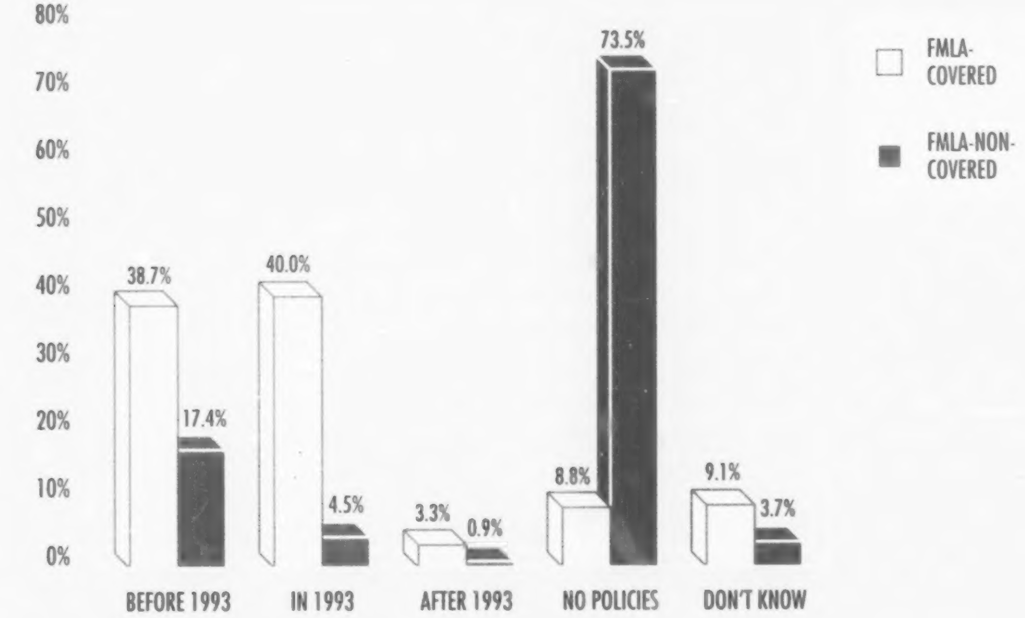
[8] See Chapter II, Section C for more information on the CBO sample used for the Census Survey.

[9] These findings on the extent of policy changes among FMLA-covered worksites cannot be compared to findings on the same topic from the Employer Survey because of differences in the way the question was asked and differences in the survey sample universe.

The Employer Survey also finds that among covered employers with family and medical leave policies that provide job-guaranteed leave, 38.7 percent established their policies before 1993, and approximately 43 percent did so during or after 1993 (see Figure 4.3). Roughly nine percent of covered worksites report having no FMLA policies established. Worksites with more than 25 employees are more likely to have had family and medical leave policies in place prior to 1993. Almost one-fifth (17.4 percent) of non-covered employers had family and medical leave policies before 1993, and an additional 5.4 percent adopted family and medical leave polices in or after 1993 (see Appendix E, Table 4.C).

FIGURE 4.3

Date of Establishment of Family and Medical Leave Policies: FMLA-Covered and Non-Covered Worksites



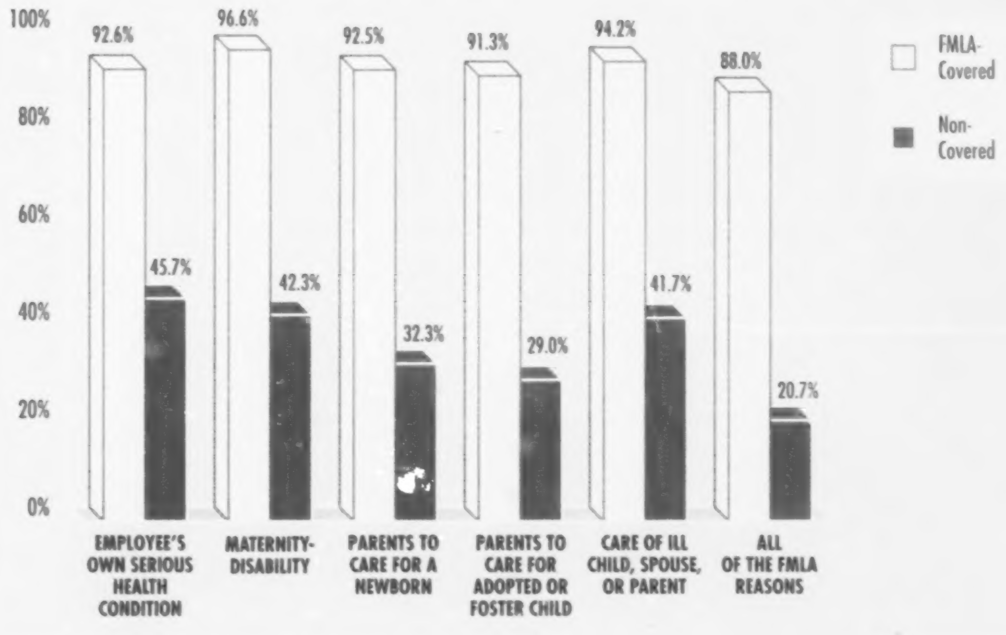
SOURCE: AGUIRRE INTERNATIONAL TABULATIONS OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

2. Leave Policies of Covered and Non-Covered Employers

The Employer Survey asked both covered and non-covered employers a number of questions about the types of benefits currently available under their family and medical leave policies. The questions asked about the following benefits: availability of up to 12 weeks of leave, including all the reasons specified in the Act; continuation of health benefits during leave; and job guarantee upon return from leave.[10] Respondents were also asked whether they offer any additional leave beyond that required by the Act. The data show that over 90 percent of the covered worksites provide up to 12 weeks of leave for family and medical reasons. They

FIGURE 4.4

Availability of Up to 12 Weeks of Leave: FMLA-Covered and Non-Covered Worksites



SOURCE: WESTAT INC. TABULATION OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

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[10] The only worksite respondents queried about health benefits and job guarantee are those who answered "yes" to the question about whether they provided 12 weeks of leave.

also continue health benefits, and guarantee a job upon return from leave for the reasons specified in the Act. A review of the data shows some considerable differences between the policies of covered and non-covered employers.

Availability of 12 weeks of leave: The FMLA requires that covered employers provide up to 12 weeks of unpaid leave for the reasons specified by the Act (see Figure 4.4, previous page). The vast majority of FMLA-covered worksites do that. For each of the FMLA-specified reasons, the percentage of covered worksites that report offering a 12-week period of leave exceeds 90 percent. By contrast, less than one-half of the non-covered worksites offer 12 weeks of leave for family and medical reasons. Non-covered worksites are less likely to offer leave for the care of a newborn child, or a child recently adopted or placed with the employee for foster care (see Appendix E, Table 4.D).

Relatively few worksites offer family and medical leave for reasons not included in the Act, although those that do are usually FMLA-covered worksites. The most frequent "other" reason that these worksites give is leave for bereavement/death in the family. Most worksites that add other reasons, however, do so under "personal leave" policies which allow leave for multiple reasons pending supervisory approval.

Among covered worksites, larger worksites with more than 250 employees are only slightly more likely to offer leave than the worksites with 250 employees or fewer.[11] As mentioned above, more than 90 percent of covered worksites make up to 12 weeks available for the various listed reasons, with differences of only a few percentage points between worksites with more than 250 and those with fewer than 250 employees. The greatest difference between the two sizes is that the larger worksites are more likely to offer family and medical leave for more reasons than the ones included in the Act.

Among the non-covered worksites, there are significant differences in the availability of 12 weeks of leave.[12] Worksites with more than ten, but fewer than 50 employees, are much more likely to offer 12 weeks of leave for each of the reasons under the Act than are worksites with ten employees or fewer. Worksites with ten employees or fewer are especially unlikely to offer parental leave to care for newborns and for adoption or foster care placement. All non-covered worksites, how-

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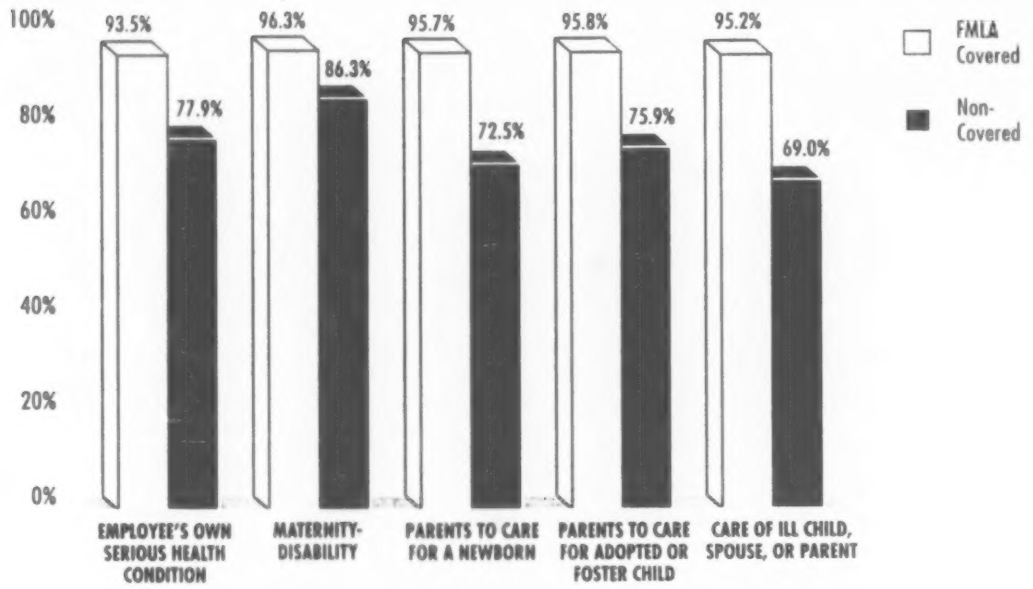
[11] David Cantor, et al., *The Impact of the Family and Medical Leave Act: A Survey of Employers,* (Rockville, MD: Westat, Inc., 1995)p. 3-9, Table 3.5.

[12] Ibid.

FIGURE 4.5

Continuation of Health Benefits During Leave: FMLA-Covered and Non-Covered Worksites [1]



SOURCE: WESTAT INC. TABULATION OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

[1] Percentages refer to establishments that make up to 12 weeks of leave available (or that it depends on circumstances).

Note: Difference between FMLA-covered and non-covered worksites is significant at $p < .05$.

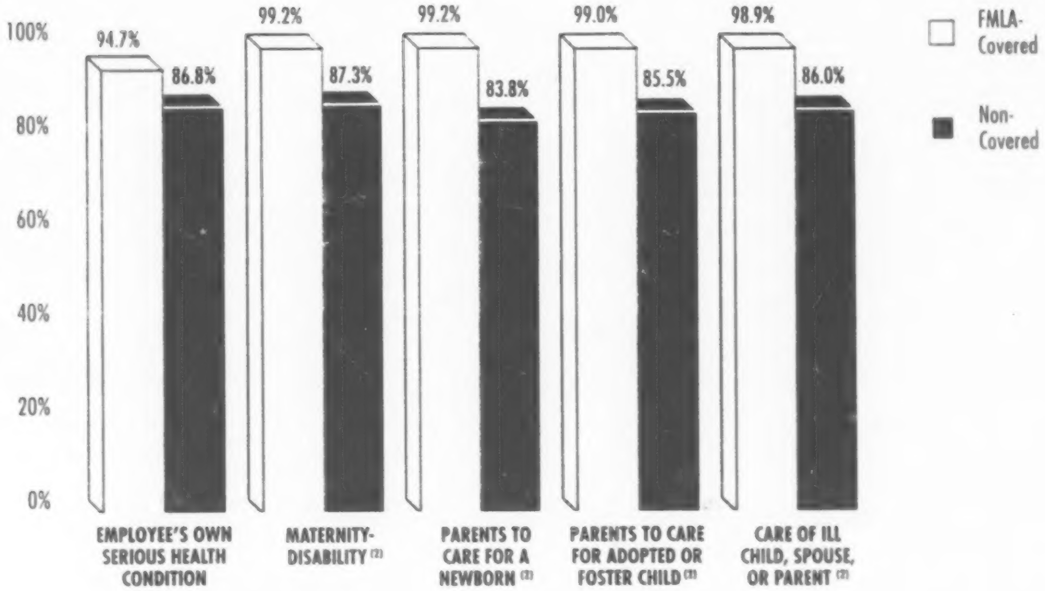
ever, appear equally likely to decide whether to grant family and medical leave on an informal, case-by-case basis.

Overall, there are no substantial industry-based differences in the types of family and medical leave offered to employees.

Continuation of health benefits: A second requirement of FMLA is that the employer continue health benefits for the leave-taking employee and that employer and employee contributions to the health plan remain the same as they were before the leave (see Figure 4.5). Of those worksites (covered and non-covered) that offer health benefits, most that provide 12 weeks of leave also continue these health

FIGURE 4.6

Are Employees Guaranteed Jobs Upon Return From Leave?
FMLA-Covered and Non-Covered Worksites [1]



SOURCE: WESTAT INC. TABULATION OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

[1] Percentages in table refer to worksites that make up to 12 weeks of leave available (or that it depends on circumstances).

[2] Difference between FMLA-covered and non-covered worksites is significant at $p< .05$.

benefits during leave. Differences related to type of leave are insignificant among covered worksites, while the most common type of leave with continued health benefits among the non-covered worksites is maternity-disability leave.

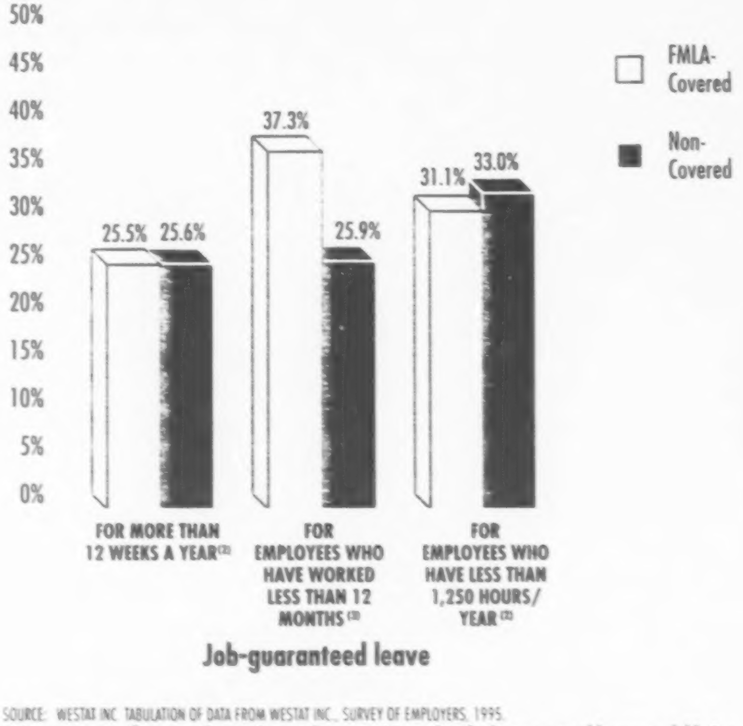
FMLA-covered worksites are significantly more likely to continue health benefits than are non-covered worksites. Over 90 percent of covered worksites offering 12 weeks of leave continue health benefits while employees are on leave for all the reasons required under the Act. By contrast, the percentage of non-covered worksites that continue health benefits changes with each reason for leave, ranging from 69 percent (for care of a family member with a serious health condition) to 86 percent (for maternity-disability reasons). Between 73 and 78 percent of non-covered worksites continue health coverage while employees are on leave for their own serious health condition, to care for a newborn and to care for an adopted or foster child. Non-covered worksites are more likely to decide on a case-by-case basis whether to continue health benefits (see Appendix E, Table 4.E).

Guarantee of job upon return from leave: The FMLA also requires employers to provide leave-takers with the same or equivalent position upon their return to work. A substantial majority of both covered and non-covered worksites who offer 12 weeks of leave do guarantee employees their jobs for each of the reasons specified in the Act (see Figure 4.6). Worksites covered by FMLA are somewhat more likely to do so than are those not covered by the Act. Thus, a minimum of 95 percent of covered worksites that offer 12 weeks of leave guarantee jobs upon their employees' return for each of the specified reasons, compared with at least 84 percent of non-covered worksites. Again, non-covered worksites are more likely to make this decision on a case-by-case basis (see Appendix E, Table 4.F).

Additional leave offered: One-quarter of the worksites in the Employer Survey offer more than the 12 weeks of job-guaranteed leave required by the Act (see Figure 4.7). More than half (58.2 percent) of the covered worksites report that they provide no more than 12 weeks of leave time, compared with 43.2 percent of non-covered worksites, although this leave is not necessarily job-protected. Non-covered worksites are more likely than covered worksites (31.2 percent compared with 16.3 percent) to say that they make the determination on a case-by-case basis (see Appendix E, Table 4.G).

FIGURE 4.7

Additional Family and Medical Leave Benefits Provided to Employees: FMLA-Covered and Non-Covered Worksites [1]



SOURCE: WESTAT INC. TABULATION OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

[1] Percentages refer to worksites that make up to 12 weeks of job-guaranteed leave available (or that depends on circumstances) for at least one of the reasons listed in Appendix E, Table 4.D.

[2] Difference between FMLA-covered and non-covered worksites is significant at $p< .05$.

[3] Difference between FMLA-covered and non-covered worksites is significant at $p< .10$.

A slightly higher percentage of covered than non-covered worksites (37.3 percent compared with 25.9 percent) offer leave to employees who have worked less than the 12 months required for eligibility under the Act. This difference can be attributed primarily to non-covered worksites' more frequent practice of making these decisions on a case-by-case basis (15.5 percent compared with 27.5 percent). About the same proportion of FMLA-covered and non-covered worksites say they do not have more generous eligibility requirements (47.2 percent compared with 46.7 percent, respectively)(see Appendix E, Table 4.G).

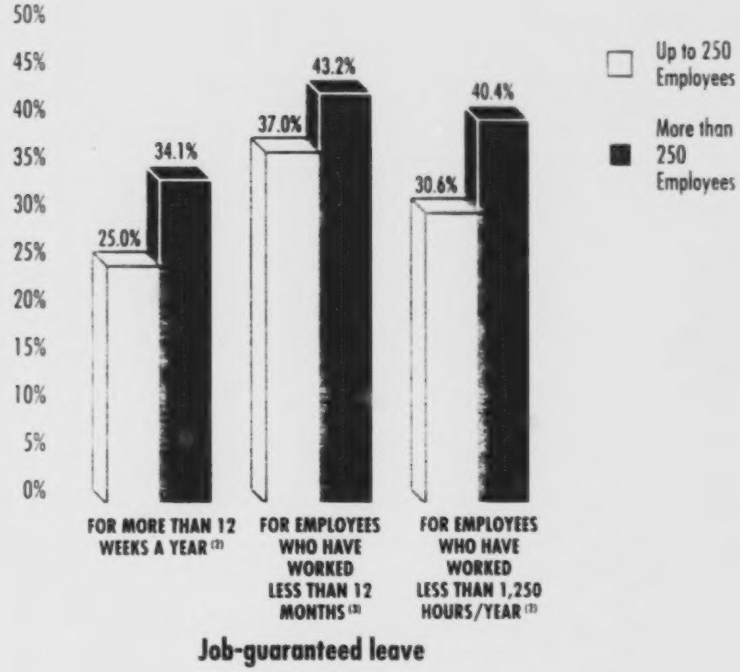
About one-third of both covered and non-covered worksites that offer job-guaranteed leave make that leave available to employees who have worked less than 1,250 hours. Non-covered worksites are more likely to make those leave decisions, as well, on a case-by-case basis.

Worksites with up to 250 employees are somewhat less likely than larger organizations to offer more than 12 weeks of job-guaranteed leave (25 percent compared with 34 percent)(see Figure 4.8). They are also somewhat less likely to offer leave benefits to employees with less than 12 months tenure (37 percent compared with 43 percent), or who have worked less than 1,250 hours in the previous year (31 percent compared with 40 percent)(see Appendix E, Table 4.H).

FIGURE 4.8

Additional Family and Medical Leave Benefits Provided to Employees, by Size of Worksite

(FMLA-COVERED WORKSITES ONLY)(1)



SOURCE: WESTAT INC. TABULATION OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995

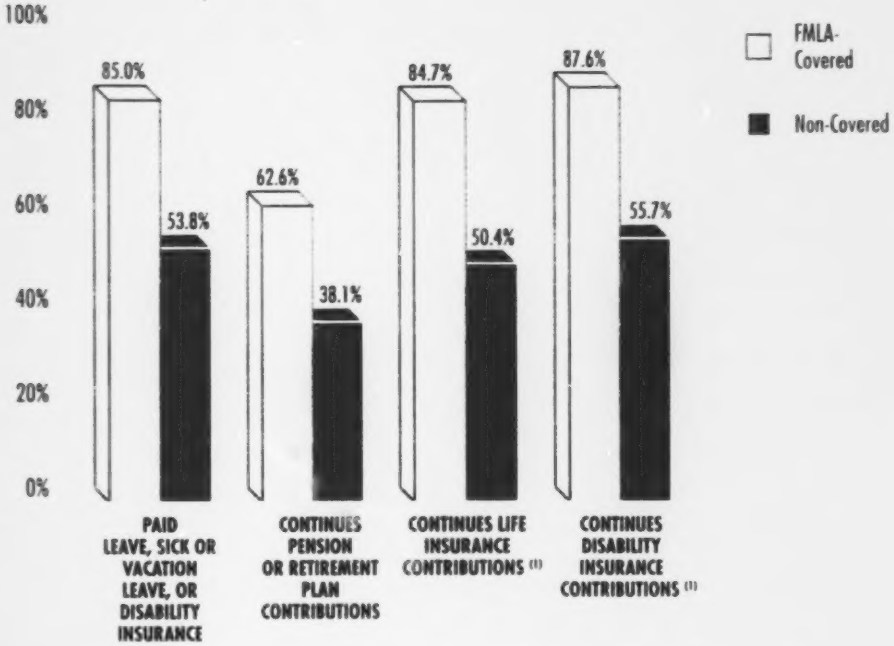
(1) Percentages refer to worksites that make up to 12 weeks of job-guaranteed leave available (or that it depends on circumstances) for at least one of the reasons listed in Appendix E, Table 4.D.

(2) Difference between the worksite sizes of FMLA-covered worksites is significant at $p< .05$.

(3) Difference between the worksite sizes of FMLA-covered worksites is significant at $p< .10$.

FIGURE 4.9

Continuation of Pay and Benefits During Leave: FMLA-Covered and Non-Covered Worksites



SOURCE: WESTAT INC. TABULATION OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

(1) Difference between FMLA-covered and FMLA-non-covered worksites is significant at $p< .05$.

Continuation of pay and benefits, other than health insurance, during leave: Worksites covered by the Act are also more likely to offer paid time off such as for sickness (or vacation) than non-covered worksites (85 percent compared with 53.8 percent)(see Figure 4.9). Of those worksites that offer pension or retirement plans, covered worksites are also more likely to continue these contributions (62.6 percent compared with 38.1 percent) than non-covered worksites. A similar pattern exists for making contributions to employees' life insurance plans and disability (see Appendix E, Table 4.1).

For FMLA-covered worksites, the size of the worksite does not have a big effect on the granting of paid leave (such as sick or vacation pay), or continuation of pension, life insurance and disability insurance during periods of leave. Thus, of those worksites with 50 to 250 employees, between 62.2 and 88 percent continue pay and benefits during leave, depending on the particular benefit. Among those worksites with more than 250 employees, the percentage that continue particular pay and benefits ranges from 68 to 90 percent (see Appendix E, Table 4.J).

In sum, the data show that more than 90 percent of the covered worksites provide up to 12 weeks of job-guaranteed leave for family and medical reasons. Of that group, 95 to 96 percent continue health benefits, and 95 to 99 percent guarantee a job upon return from leave for the reasons specified in the Act. The proportion of non-covered worksites that offer these benefits on a uniform basis is much lower - between 21 to 46 percent make up to 12 weeks of leave available, depending on the reason for leave. Of that group, between 69 and 86 percent continue health benefits (depending on the reason for leave), and approximately 85 percent offer a job-guarantee upon return from leave, regardless of the reason.

While the vast majority of covered employers are in compliance with the FMLA, approximately ten percent of covered employers appear to be failing to meet all, or some part, of their obligations under the Act. Further research on this employer minority is needed over time to learn the cause of that apparent non-compliance and the extent to which it may be due to not having eligible employees, lack of knowledge of the new law, unintentional non-compliance or intentional violations of the Act. The fact that about ten percent of employers do not know whether they are covered indicates that knowledge (or lack of it) may be a significant factor, as discussed below.

D. Knowledge of the New Law

To educate the public about the FMLA, the Department of Labor has initiated an extensive outreach campaign. From August 5, 1993 to September 30, 1995, Department of Labor staff presented more than 1,400 speeches, seminars and media events, responded to 270,000 telephone inquiries, and distributed public service announcements to all major markets. While this has been a well-organized public education effort, the following data from the Employer and Employee Surveys show that more education is needed overall, especially among employees.

1. Employers' Knowledge of the FMLA

Section 109 of the FMLA makes employers responsible for notifying employees about their rights under the Act by posting a notice which sets forth the FMLA's pertinent provisions. Since employees are technically dependent on the employer to be informed about the law, employer knowledge is an important indicator of how far the law has penetrated the U.S. labor market, and is important in its own right. To assess employers' knowledge of the law, the Employer Survey directly asked the respondent if he or she believes that his or her worksite is covered under the FMLA. The result was that 86.5 percent of the employers whose worksites are classified as "covered" by the Act (that is, they report 50 employees or more at the worksite or within a 75-mile radius) know that the FMLA applies to their location and 12.3 percent of the covered employers do not know if their worksite is covered. A tiny portion (1.2 percent) of employers at covered worksites incorrectly believe that FMLA does not apply to their location (see Table 4.3).[13]

Worksites that are not classified as "covered" by the Act due to their size are less knowledgeable about the law. Of those, more than half (56.5 percent) do not know whether they are covered, 8.3 percent incorrectly think they are covered and 35.2 percent know they are not covered.[14]

TABLE 4.3

Self-Report of Whether the Family and Medical Leave Act Applies to Worksite by FMLA Coverage Status[1]

DOES THE FAMILY AND MEDICAL LEAVE ACT APPLY TO THIS LOCATION? [2]	FMLA-Covered	Non-Covered	Total
Yes	86.5%	8.3%	16.8%
No	1.2%	35.2%	31.5%
Don't Know	12.3%	56.5%	51.7%
Total	100.0%	100.0%	100.0%

SOURCE: WESTAT INC. TABULATIONS OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995

[1] A worksite is considered "covered" if there are 50 employees or more at one worksite surveyed or within a 75-mile radius of that worksite.

[2] Difference between FMLA-covered and non-covered worksites is significant at $p<.05$.

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[13] Employer knowledge of the FMLA and whether it applies to the worksite surveyed may be somewhat overstated since a letter from Westat, Inc. regarding the Commission's research on FMLA was mailed before the telephone interview was conducted for the Employer Survey.

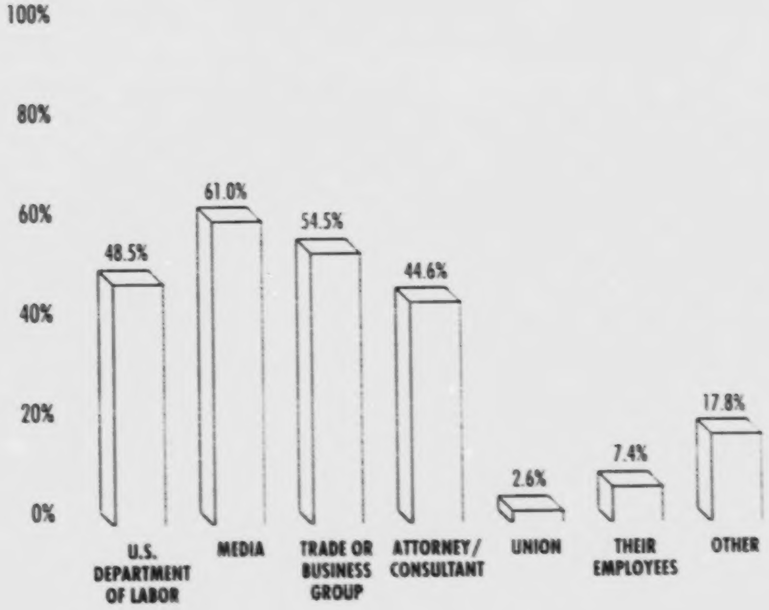
[14] Since the employer coverage and employee eligibility requirements of the FMLA are different, and relatively complicated, it is not surprising that there is some confusion about coverage, especially among worksites that are not covered.

Worksites that either are incorrect about their coverage or do not appear to understand whether they are covered by the FMLA tend to be small (fewer than 50 employees). In fact, of those employers who are either incorrect or uncertain about their coverage status, 79.3 percent are worksites with ten employees or fewer. In addition, two-thirds of the group of employers that were unsure or incorrect about their coverage status qualify as covered only because of the 75-mile radius rule. In other words, they do not have 50 employees or more at the surveyed worksite, but they do have 50 employees or more within a 75-mile radius of the surveyed worksite. These findings suggest that outreach to small businesses about the 75-mile radius rule might alleviate some of the current confusion among employers about their coverage status.

Worksites which reported that they were covered by the FMLA (whether correctly or incorrectly) were asked how they learned about the Act. The majority of

FIGURE 4.10

How Employers Learned About FMLA



SOURCE: BUREAU OF LABOR STATISTICS, TABULATIONS OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

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worksites learned about the FMLA either through the media (61 percent) or through trade and business associations (54.5 percent). Slightly less than one-half of these worksites learned about the FMLA through the U.S. Department of Labor (48.5 percent) or through attorneys/consultants (44.6 percent) (see Figure 4.10).

The Census Survey, in contrast to the Employer Survey, finds that a smaller number of the covered employers know they are covered by FMLA (69.2 percent) and a larger percentage believe they are not covered (15.8 percent). About the same percentage in both surveys do not know if the law applies to them. The results on knowledge of the law among the non-covered worksites is roughly the same as the Employer Survey findings. Roughly half do not know if the law applies to them or have never heard of it at all, 43 percent know that they are not covered and 7.7 percent incorrectly believe they are covered.

Testimony of covered employers from the Commission hearings indicates that "knowledge" of the Act means more than just learning about its existence and understanding its basic provisions.[15] Catherine A. Morris, the corporate human resources manager at Atlantic Richfield Company (ARCO) - whose worksite has "postings on the bulletin board," a "benefits handbook [with a] section on family medical leave" and a "new-hire orientation program [which has] incorporated the information" on FMLA - concluded that the "Act already goes pretty far to make sure that employees are aware of the benefits...."[16] Elizabeth Pedrick Sartain, a Southwest Airlines vice president, however, noted that while she has been able to study the law, educate her peers and train the companies' supervisors on the law, many "small compan[ies] haven't done that, because they don't know where to get access to it [and] they don't understand it when they read it. It is extremely complex."[17] Diane Duval, the corporate benefits manager from Lotus Development Corporation, believes that it is "crucial" to educate individual managers about the Act, because "[n]ot only must managers understand and support the benefits themselves, they must be able to manage the impact of such programs on the employees' immediate workgroup."[18] A number of employees also testified that their employers do not have knowledge (see below).

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[15] The Commission on Family and Medical Leave conducted three public hearings: in San Francisco, CA, Washington, D.C. and Chicago, IL. Footnotes will designate the location, page, and, where appropriate the source.

[16] Testimony of Catherine A. Morris, Corporate Human Resources Benefits Manager, ARCO at San Francisco, CA Hearing, June 26, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 102.

[17] Testimony of Elizabeth Pedrick Sartain, Vice President People Dept.,Southwest Airlines, at Chicago, IL Hearing, May 8, 1995, U.S. Commission on Leave Public Hearing Transcript, pp. 99-100.

[18] Testimony of Diane Duval, Corporate Benefits Manager, Lotus Development Corporation at Washington, D.C. Hearing, August 4, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 25.

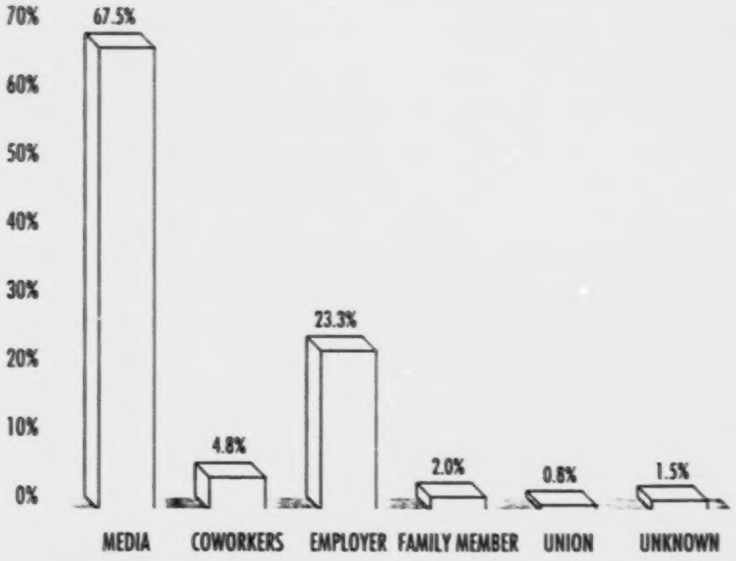
2. Employees' Knowledge of the FMLA

Employees, in general, are far less informed than employers about the FMLA, as well as about their individual eligibility for job-protected leave. Overall, 55.5 percent of employees have heard of the FMLA. This includes 58.2 of employees working at FMLA-covered worksites and 48.5 percent of employees at non-covered worksites.[19]

The Employee Survey finds that salaried employees are more likely than hourly employees, or employees paid by commission or piecework to have learned about the FMLA (see Appendix E, Table 4.K). Thus, 63.3 percent of salaried employees

FIGURE 4.11

How Employees Learned About FMLA



SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995.

Note: Numbers may not add due to rounding. 54,921,448 respondents are not included in this table because they report no knowledge of the FMLA.

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[19] Katherine A. McGonagle, et al. *Commission on Leave Survey of Employees on the Impact of the Family and Medical Leave Act.* (Ann Arbor, MI: Institute for Social Research, Survey Research Center, University of Michigan, October 1995), p. 25, Table 6.2.2a.

have heard of the Act, compared with 50 percent of hourly wage employees and 42.9 percent of employees paid by piecework or on commission. Union members are also more likely to have heard of the Act, with 60.3 percent of union members having heard of the FMLA, compared with 54.7 percent of non-union members.

Employees with higher educational levels are also more likely to have heard of the Act. Specifically, 70.4 percent of employees with four years of college or more have heard of the Act, compared with 59.1 percent with some college education, 41.7 percent of high school graduates and 27.2 percent of employees with less than a high school education.

The Employee Survey finds that employees from all demographic groups are most likely to have learned about the FMLA through the media, and the next most likely source of information on the Act is their employers (See Figure 4.11). A greater proportion of employees who are leave-takers (who took leave for a reason covered by the Act), (27.5 percent) have heard about the FMLA through their employers than did other employees in the sample. Leave-takers are comparatively less likely (61.1 percent compared with 69 percent for other employees) to have heard of the Act through the media (see Appendix E, Table 4.L).

In sum, the media is the chief source of information for employees about the Act. The employer serves as the second most important source, although this source of information is significantly less important than the media. Only a very small number of employees have heard of the Act through their co-workers, their union or a family member.

The hearing testimony corroborates the findings from the Employee Survey that while some employees learned about the FMLA and their eligibility for leave through their employer,[20] others learned about it through other sources, such as the news,[21] their spouse[22] or their union.[23] Employee Velma Parness testified that she was able to obtain a copy of the Act from her personnel manager, but "the university is such a huge bureaucracy that nobody was willing to take responsibility for giving [her] an answer." As a result, she "did it on [her] own."[24] Employee Patricia Connell noted: "In the past when I had requested unpaid time from my job, it had been given reluctantly and with a concern that [the employer] might be setting a bad precedent." This time, however, "[a]rmed with the [Act], I approached my employer and asked for periodic leave to allow me to travel back and forth to Pennsylvania once a month" to assist her mother with chemotherapy sessions. This time, Ms. Connell recounted, she had "nothing to fear."[25] Employee Kevin Knussman said that there were no postings of FMLA benefits[26] and that he experienced difficulty in obtaining information about the benefits to which he may have been entitled. Mr. Knussman believes that increased efforts are needed to educate responsible parties, such as personnel managers and attorneys, "on the benefits guaranteed under the FMLA legislation."[27]

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[20] Testimony of Walter Fish at Washington DC Hearing, August 4, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 40; Testimony of Ann Daniels at San Francisco, CA, Hearing, June 26, U.S. Commission on Leave Public Hearing Transcript, pp. 24-25; Testimony of Lori Solberg at Chicago, IL Hearing, May 8, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 135.

[21] Testimony of Kenneth Weaver at Chicago, IL Hearing, May 8, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 38.

[22] Testimony of Christie Sens at Washington, DC Hearing, August 8, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 36.

[23] Testimony of Carol Griffin at San Francisco, CA Hearing, June 26, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 84; Testimony of Albert R. Burns at Chicago, IL Hearing, May 8, 1995, U.S. Commission on Leave Public Hearing Transcript, pp. 78-9; Testimony of Patricia O'Connell, at Chicago, IL Hearing, May 8, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 38.

Other testifying employees reported that their employers did inform them about the FMLA, and that they assisted them in using it. Joseph Tully recalled that when he needed time off to care for his hospitalized mother, he called his department director and asked if there "was any way I could have some excused unpaid time off from work. He then told me about the FMLA and [the employer's] policy. When he mentioned it, I remembered reading the memo from human resources about it, and I remember seeing the poster in the lunch room. However, until [the department director] reminded me of it, I hadn't fully realized it would apply to my own situation. Therefore, I was greatly relieved to learn that FMLA would allow me to do what I felt in my heart was the right thing to do."[28] In general, many employees may not even investigate their leave options until they have a concrete need to do so.

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[24] Testimony of Velma Parness at San Francisco, CA Hearing, June 26, 1995, U.S. Commission on Leave Public Hearing Transcript, pp. 20, 55-6.

[25] Connell, pp. 19-20.

[26] Testimony of Kevin Knussman at Washington, DC Hearing, August 4, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 106.

[27] Ibid., p. 109.

[28] Testimony of Joseph Tully at Chicago, IL Hearing, May 8, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 139.

E. Rate of Utilization of the FMLA

Both the Employer Survey and the Employee Survey included questions designed to estimate the number of employees who have actually taken leave "under the FMLA" (as distinct from any employee who took leave for a reason covered by the Act, but might or might not have designated it as "FMLA leave"). The two surveys arrive at fairly similar utilization rates.[29] The Employer Survey finds that 3.6 per every 100 employees at covered private-sector worksites took leave under the FMLA, compared with two per every 100 covered and eligible employees at covered public and private-sector worksites who took leave under the FMLA according to the Employee Survey.[30]

Based on the estimate from the Employe Survey, one to two million employees almost certainly took leave under the FMLA in the 18 months covered by the survey. These were workers who met the eligibility criteria in the law and believed they had indeed taken their leave under the Act. Furthermore, there are others who probably took leave under the FMLA. They include employees in covered firms who, while not eligible for one reason or another, were allowed to take leave under the Act; or employees in covered firms who, whether eligible or not, were given leave under the FMLA and did not know it. Information from the Employer Survey, which covered the same 18 months, indicates that an additional 600,000 to 1.3 million workers, just from the private-sector, might have taken leave under the Act. Thus, in total, it is likely that somewhere between one to just over three million employees took leave during the period covered by both surveys.

1. Data on Utilization of the FMLA from Employers' Experience[31]

The Employer Survey finding that 3.6 percent of employees took leave under the FMLA, means that somewhere between 1.75 and 2.5 million private-sector employees took leave during the 18-month period of the survey. This estimate varies somewhat by both the size of the organization, as well as by type of industry (the SIC category).[32] Workers employed at smaller covered worksites with fewer than

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[29] While the methods used in the Employer and Employee Surveys are quite different - each with their own strengths and weaknesses - it is interesting that the difference in their estimates of utilization is relatively small.

[30] See McGonagle, et al., p. 18 and Cantor, et al., pp. 3-5.

[31] The Census Survey questions on utilization differ from those asked in the Employer Survey in terms of the time period covered and the type of leave included. The Census Survey found that almost 20 percent of firms reported that their employees took some type of leave for a family or medical reason and that the proportion did not change between 1992 and 1994.

[32] Cantor, et al., pp. 3-6, Table 3-3.

250 employees are less likely to have used FMLA than those at the larger worksites (2.4 percent compared with 5.3 percent). Employees in the manufacturing sector are more likely to have used FMLA than those in the retail industries. Thus, 4.4 percent of covered employees in manufacturing took leave, compared with two percent of retail employees, 3.7 percent of service employees and 3.6 percent of employees in all other industries.

2. Data on Utilization of the FMLA from Employees' Experience

The Employee Survey finds that of the household members who had been employed within the 18 months prior to the interview, 16.8 percent had taken leave for a reason covered by FMLA and an additional 3.4 percent needed to take a leave but did not.[33] The rest neither took leave nor needed to take leave. Of the 16.8 percent of all employees who took leave, about seven percent of that group report that the leave they took was, in fact, under the FMLA. This seven percent group of FMLA leave-takers makes up almost 1.2 percent of all employees 18 years and older who had been employed from January 1, 1994 until the survey interview. Given that 55 percent of persons in the employee population are employed by worksites covered by the FMLA and eligible to take leave under the Act, the FMLA utilization rate among this group of employees is about two percent.[34] The Employee Survey reports that the group of leave-takers that can be most definitively characterized as having taken leave under the FMLA - called "FMLA-users" - are those who report working for an FMLA-covered employer, report that they personally meet the eligibility requirements, report having heard of the FMLA and report that they designated their leave as "FMLA leave." This strict definition of FMLA-users therefore probably results in a conservative estimate of FMLA use. Given the statistical variability in this estimate, the number of public and private-sector employees who took FMLA leave falls somewhere between one and two million according to the Employee Survey.

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[33] McGonagle, et al., p. 17.
[34] Ibid, p. 18.

F. Compliance Under the FMLA

It is clear from the data concerning employer knowledge of the law and current employer family and medical leave policies that the great majority of covered employers are knowledgeable about FMLA, and report that they are meeting their obligations under the Act. The data also show, however, that between one and 12 percent of covered employers are not providing leave for each of the reasons specified in the Act, either due to lack of knowledge or some other reason. The Wage and Hour Division of the U.S. Department of Labor is responsible for the government's efforts to ensure employer compliance under the Act. This section provides data from the Wage and Hour Division concerning their activities in enforcing compliance with the Family and Medical Leave Act.

1. Complaints Made to the Department of Labor

Between August 5, 1993 (effective date of the FMLA) and September 30, 1995 (the end of the fiscal year) the Wage and Hour Division received 3,833 complaints and has completed compliance actions on a total of 3,650 complaints against employers for alleged failure to comply with the FMLA. More than half the complaints (59 percent) constituted valid complaints where apparent violations of the FMLA existed. Forty-one percent of the complaints were situations which were not covered by, or which did not violate, the FMLA.

Of the total number of cases (3,650) acted on by the Wage and Hour Division, 2,897 (79 percent) were handled by conciliation and 753 (21 percent) by investigation. The Wage and Hour Division found that 1,501 cases had no violations: the employer was not covered (seven percent); the employee was not eligible (16 percent); the complaint was not valid (74 percent); or the case was not valid for other reasons (three percent).

A total of 2,149 violations was found. The Department of Labor has successfully resolved 90 percent of the complaints with FMLA violations. As of March 1, 1996, the Department has filed lawsuits in various courts against eight employers for alleged FMLA violations. Two of those cases were settled, in one case the court found there were no violations after a full trial and the remaining five cases are pending. (This does not reflect private action taken by individuals without Department of Labor participation. Employees have the right to private action, and many private lawsuits have been filed without Department of Labor participation.)

Of the valid complaints regarding the FMLA, the majority were due to employers refusing to reinstate leave-takers to their same or equivalent position (see Figure 4.12)

FIGURE 4.12

FMLA-Related Complaints Received by U.S. Department of Labor[1]

Employer refusal to reinstate employee to same or equivalent position	61%
Employer refusal to grant FMLA leave	19 %
Employer interference with or discrimination against an employee who has used FMLA leave	13%
Employer refusal to maintain a leave-taking employee's group health benefits	7%
Other	less than 1%

[1] These complaints were received between August 5, 1993 and September 30, 1995.

2. Resolution of Complaints

The Wage and Hour Division was able to successfully resolve the vast majority of complaints without any type of litigation. For those cases successfully resolved (a total of 1,934), FMLA leave was granted for 21 percent, adverse action was dropped for 14 percent, benefits were restored for seven percent (for a total of $93,543), back-wage payment without job restoration was accomplished for 14 percent (for a total of $944,898), jobs were restored for 24 percent and jobs were restored with pay/benefits for 19 percent (for a total of $746,636).

For unresolved cases (a total of 215), job restoration was sought for 92 percent (for a total of $1,282,463), granting of FMLA leave was sought for five percent, dropping of adverse action was sought for one percent and restoration of health benefits was sought for one percent (for a total of $4,680). Many of these cases are under review for potential litigation by the U.S. Department of Labor.

G. Summary

Working for a covered employer: Approximately two-thirds of the U.S. labor force works for covered employers. Certain sub-groups of America's labor force are more likely than others to be among those workers employed at worksites which are large enough to be covered by the Act. Employees with higher levels of education and income enjoy the greatest proportion of coverage. Differences also exist depending on one's racial or ethnic background, with African Americans having the greatest proportion of workers employed at covered worksites. Unionized workers are also more likely to work at covered worksites. By contrast, employees from households with the lowest family income levels, employees with the lowest levels of education, those in the youngest age categories, as well as Latino employees are the least likely to work for worksites covered by the Act.

Meeting the eligibility requirements: Due to the Act's employee eligibility requirements concerning length of tenure and number of hours worked, as well as the Acts requirements on worksite size, only slightly more than half of U.S. workers are actually eligible to take leave under the Act. Not quite one-half of private-sector workers meet the Act's eligibility requirements. The groups most likely to lose access to leave because of service and hours-related eligibility requirements are young workers, low-income workers and "never-married" workers.

While only about ten percent of all private-sector U.S. worksites are covered by the Act, this relatively small proportion actually employs more than half of the nation's private-sector employees. Industries with the largest worksites, such as manufacturing, also have a large number of eligible employees working in a relatively small percentage of worksites.

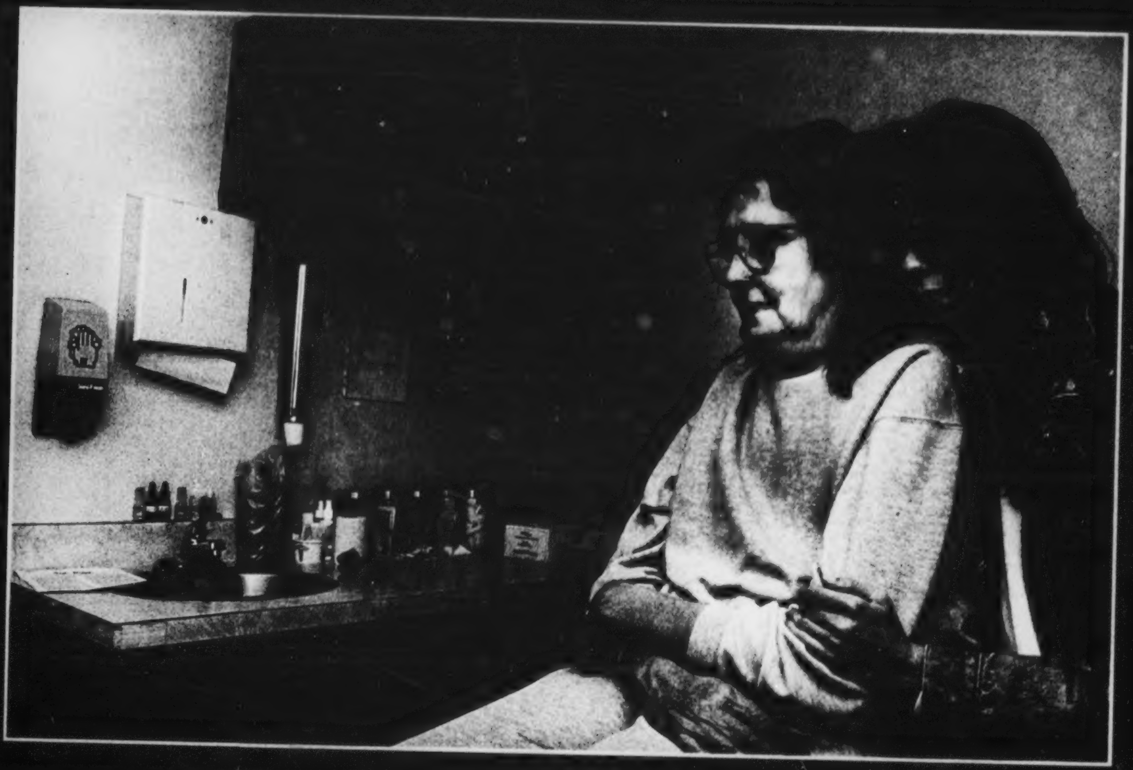
Employer leave policies: The passage of FMLA has had a substantial impact on employer leave policy, with two-thirds of covered worksites initiating a policy or changing some aspect of their policy in order to comply with the Act. Over 90 percent of employers at covered worksites provide up to 12 weeks of leave for family and medical reasons. The majority of this group also continues health benefits, and guarantees a job upon return from leave for the reasons specified in the Act. The proportion of non-covered worksites that offer these benefits on a uniform basis is much lower. Employers at non-covered worksites are more likely to offer leave for the employee's own serious health condition and for maternity leave, and less likely to offer paternity leave or leave to care for a family member with a serious health condition.

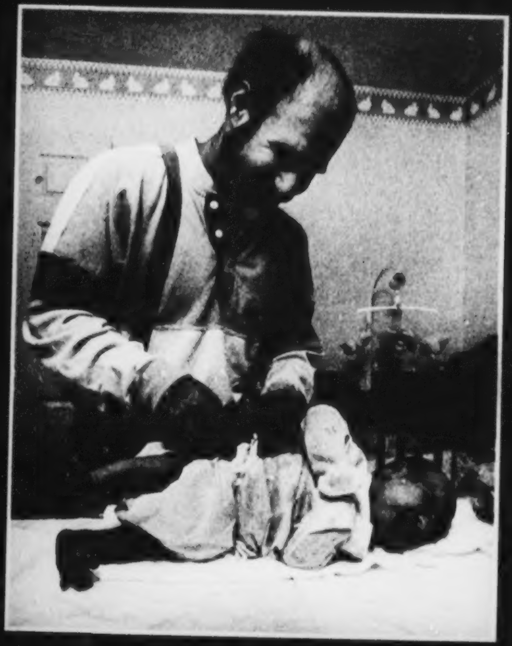
Knowledge of FMLA: The employer community is far more knowledgeable about the law than are employees. Eighty-six and one-half percent of the employers whose worksites are classified as "covered" by the Act know that the FMLA applies to their location. In contrast, only 58 percent of employees working at covered worksites have heard of the FMLA.. Salaried employees and union members are more likely to have heard of the Act than hourly employees and non-union members. The media is the key source of employee information.

Utilization: The Employer Survey finds that at covered worksites, the ratio of employees taking leave under FMLA was 3.6 for every 100 employees. This ratio varied somewhat by both the size of the organization, as well as by type of industry. Employees in the manufacturing sector (4.4 percent) are more likely to have used the Act than are employees in the retail industries, and employees at worksites with more than 250 employees (5.3 percent) are more likely to use the Act than are employees at smaller worksites.

The Employee Survey finds that of the household members who had been employed within the 18 months prior to the interview, 16.8 percent had taken leave for a reason covered by FMLA and approximately 3.4 percent needed to take leave but did not. Of that 16.8 percent who took leave, approximately seven percent of that group took leave under the FMLA. Given that roughly 60 percent of all employees work for covered employers, this means that the overall utilization rate among employees is two percent. This is a conservative estimate.

Compliance: The vast majority of covered employers are knowledgeable about FMLA, and are apparently meeting their obligations under the Act. However, between one and 12 percent of covered employers are still not providing leave for each of the reasons specified in the Act, either due to lack of knowledge or some other reason. Further research is needed to ascertain the causes of non-compliance.





Employers' and Employees' Experiences with Leave Since Enactment of the FMLA

A. Introduction

This chapter discusses patterns of leave-taking based on data from the Employer and Employee Surveys, and from employers' and employees' testimony at public hearings held by the Commission on Leave. The chapter starts with a section that describes the reasons for which workers took leave and the length of the leave they took, as well as the needs of employees who wanted to take leave but did not do so. The next section discusses how the job duties of employees on leave were covered for the duration of their leave, and the attitudes of employees toward their co-workers who took leave. This is followed by a section on employees' benefits while on leave, access to wage replacement, and how leave-takers dealt with the loss of income if their leave was partially paid or unpaid. The last section examines the degree to which leave-takers returned to their jobs, and is followed by a brief chapter summary.

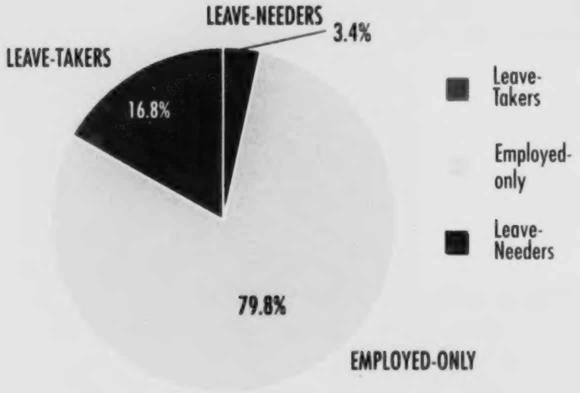
It should be noted that all our findings on leave-taking from the surveys cover not only absences described by the employer and employee as leave taken under the FMLA, but also leave taken for reasons covered by the FMLA but possibly labeled as sick leave, personal leave, or vacation. In other words, the types of leave-taking reported on in this chapter reflect a combination of those covered by the FMLA and other standard leave policies.

B. Who Needs and Takes Leave?

The Employee Survey shows continuing demand for the kinds of leave covered by the FMLA. Nearly [illegible] percent of employees surveyed took leave for reasons cov ered by the Act between January 1, 1994 and the summer of 1995.[2] An additional 3.4 percent stated that they needed but, for a variety of reasons discussed below, did not take leave. In other words, about 20 percent of the employees surveyed in both covered and non-covered worksites either took or needed to take leave for serious personal medical conditions or family caregiving reasons (see Figure 5.1).

FIGURE 5.1

Employee Surveyed by Leave Status



SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995.

The demographic profile of leave-takers generally resembles that of the overall employee sample (see Appendix E, Table 5.A). Nevertheless, there are some noteworthy contrasts between the overall survey population and the leave-taker population. For example, women are more likely to take leave than men (58.2 percent compared with 41.8 percent), reflecting in large part the facts that men do not bear children and (as discussed below) women are somewhat more likely to care for infants and some seriously ill family members than men.

In absolute numbers, the largest group of leave-takers is between 35 and 49 years old (about 40 percent of all leave-takers). However, relative to their representation in the employed population (22.8 percent), employees in the 25-to-34 year-old age group are more likely than other employees to take leave (29.6 percent). As will be discussed below, this in large part reflects the fact that many employees who take leave do so to care for young children, and that those in their 20's, 30's and 40's are most likely to have children who may need care.

As discussed in Chapter IV, seven percent of this group are considered "FMLA-users," that is, they took their leave under the guidelines of the Act and designated it as such. As the overall number of cases of FMLA users is small (n=138) they are not analyzed separately from the leave-taker group. However, their patterns of leave-taking are comparable to the leave-taker group as a whole in terms of their reasons for leave, length of leave and extent of pay during leave - see Katherine A. McGonagle, et al. Commission on Leave Survey of Employees on Impact of the Family and Medical Leave Act (Ann Arbor, MI: Institute for Social Research, Survey Research Center, University of Michigan, October 1995), Tables 6.2.2 (c), (d), and (e).

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African American and Latino employees have a higher probability of taking leave than whites. However, this finding does not control for multiple socio-demographic characteristics, such as education, income and family size. For example, leave is also more likely to be taken by employees with one or more children than employees without dependents.

There does not seem to be any particular relationship between educational level and the likelihood of taking leave. Differences in annual family income, however, are notable: employees with annual family incomes of $20 to 30,000 are more likely to take leave relative to their representation in the employed population than employees in other income categories. It is not surprising, then, that hourly employees (whose incomes tend to be lower than those of salaried employees) are also more likely to take leave than salaried workers- even though they are less likely to be covered by the Act.

C. Reasons for Taking Leave

The FMLA covers two major types of leave: medical leave which includes leave for one's own serious health condition (excluding maternity-disabilities); and family leave, which includes (a) leave to care for a newborn, a newly-adopted or new foster child (parental leave)[3] and (b) leave to care for a seriously ill child, spouse or parent. In addition, there is another type of leave which crosses these two major categories - maternity-disability leave. When taken before childbirth, it is a second type of medical leave. When taken after childbirth, it may combine physical recovery from a serious health condition and care of a newborn.

Reasons for leave-taking by employees at non-covered worksites closely resemble those of employees working at covered worksites.[4] This suggests that the need for leave is to a great extent independent of the availability of mandated, job-protected family and medical leave.

Figure 5.2 offers an overall picture of the reasons why employees take leave, including both leave-takers at covered worksites and those employed at non-covered

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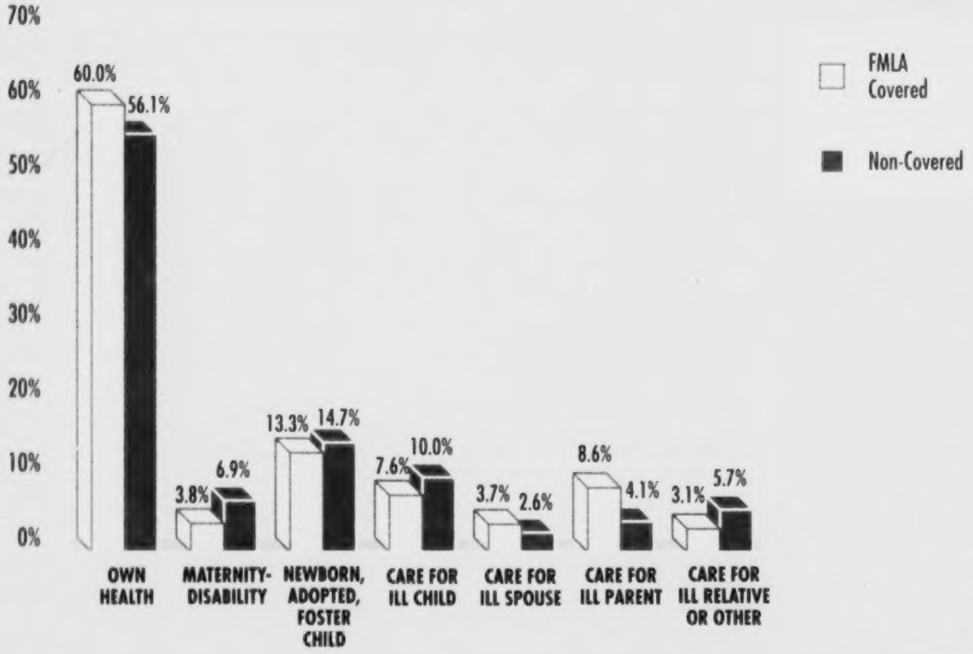
Throughout, leave to care for a newborn child as a category is collapsed with leave to care for a newly adopted or new foster child, since the incidence of the latter two types of leave is extremely small and resembles closely that of the former.

[4] As noted in Chapter IV, covered worksites are more likely to offer leave for each of the FMLA reasons than non-covered sites.

FIGURE 5.2

Leave-Takers at FMLA-Covered and Non-Covered Worsites, by Reason for Leave



SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995.

Note: Percentages do not add to 100% because respondents could choose more than one category.

worksites. There is no statistically significant difference regarding the reasons for taking leave between these two groups of employees. Fifty-nine percent of those who take leave do so because of their own serious health problems.[5] Leave-taking for one's own serious health condition is least prevalent among those aged 25 to 34, and more prevalent among workers with relatively lower levels of education, lower levels of annual family income (especially for employees in the less than

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It is important to keep in mind that the data do not distinguish between "serious health condition" leaves taken as regular sick leave - such as the sick days many companies offered before the FMLA was passed - and "FMLA leave" taken after regular "sick days" have been exhausted, or in lieu of sick days. See Katherine A. McGonagle, et al., *Commission on Leave Survey of Employees on Impact of the Family and Medical Leave Act* (Ann Arbor, MI: Institute for Social Research, Survey Research Center, University of Michigan, October, 1995), p. 19.

$20,000 per year category) and among unionized employees. Hourly employees are more likely to take leave for their own serious health condition than salaried workers. Men are more likely than women to take leave for their own serious health conditions and employees in their 50's and 60's are more likely than younger employees to take leave for this reason (see Appendix E, Tables 5.B and 5.C).

Men and women are taking comparable amounts of parental leave. In addition, some portion of women's care of newborns is probably included in their designation of maternity-disability leave. Men are more likely to take spousal care leave than women, some of which is probably care of their wives before or after childbirth. Women are more likely to care for seriously ill children or parents.[6]

About one-fourth of leave taken appears to be used by relatively young parents to care for their children. More specifically, almost one-fifth of all leave taken is taken by parents caring for newborn, adopted or foster children, and by women as maternity-disability leave. These two types of leave are taken by 17.1 percent of employees at covered worksites and 21.6 percent of employees at non-covered worksites. An additional eight percent of leave is taken by employees needing to care for their seriously ill children. This category of family leave is taken by 7.6 percent of employees at covered worksites and ten percent of employees at non-covered worksites.

Leave to care for a seriously ill child is most likely to be taken by employees between the ages of 25 and 34, and next most likely to taken by employees in the 18-to-24 and 35-to-49 age groups. Maternity-disability leave and leave to care for a newborn child are, not surprisingly, more often taken by married than unmarried employees. Approximately ten percent of leave is taken by employees who are typically somewhat older in order to care for seriously ill adult family members. For example, leave is taken by around three percent of employees in covered and non-covered worksites to care for seriously ill spouses. About nine percent of leave-takers at covered worksites, and about four percent of employees at non-covered worksites take leave to care for a seriously ill parent.

Women are somewhat more likely than men to need leave and to take leave, in large part because only women take leave in order to bear children, and because

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There is no statistically significant relationship between reason for leave and race/ethnicity. See McGonagle, et al., p. 20

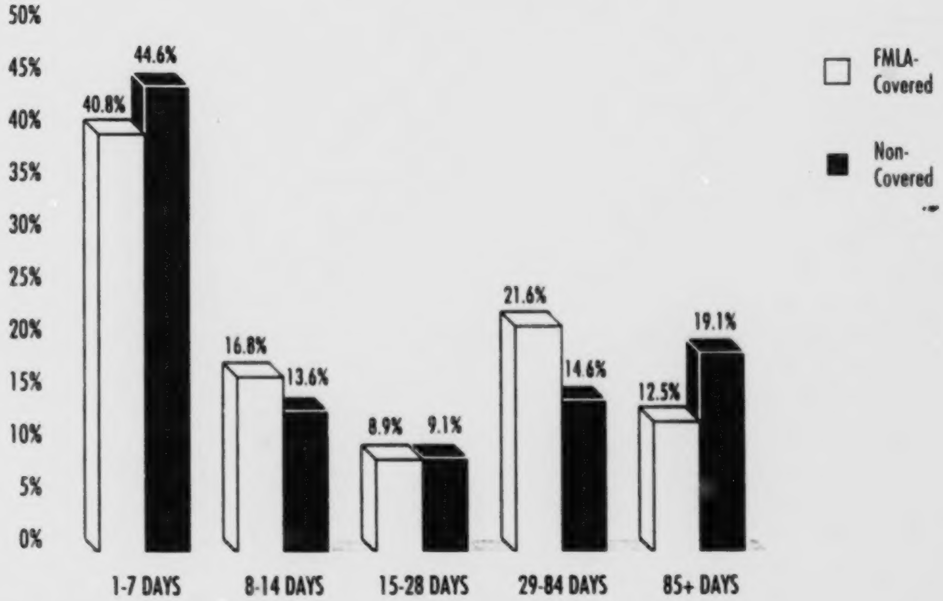
women are more likely than men to take most kinds of family leave. On the other hand, when men and women take leave, they take comparable amounts of parental leave, and men take more leave to care for a seriously ill spouse - some of which may be care of their wife before or after childbirth.

D. Length of Leave

The Family and Medical Leave Act allows for unpaid leave of up to 12 weeks. The great majority of all leave falls within the 12-week period established by the Act.[7]

FIGURE 5.3

Leave-Takers at FMLA-Covered and Non-Covered Worksites, by Length of Leave



SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995.

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[7] It should be noted that it is impossible to interpret precisely what employees mean when they report a certain number of days of leave-taking. Some employees may think of a weeks leave in terms of seven days, while others may think of five days (the work week) as a weeks leave. For the purposes of this report, 84 days (12 times seven days) means 12 weeks of leave.

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The median length of leave for all leave-takers was ten days, with a mean of 37 days. Ten percent of leave-takers were on leave for one to three days; 75 percent were off the job for fewer than 35 days.[5]

As shown in Figure 5.3, leave taken by workers in non-covered worksites has a different distribution than that taken by workers at covered worksites. For example, 30.5 percent of leave-takers at covered worksites were off the job for somewhere between two weeks (15 days) and 12 weeks (84 days), compared with 23.7 percent of leave-takers at non-covered worksites. In addition, periods of leave that lasted more than 12 weeks were taken by 12.5 percent of employees at covered worksites and 19.1 percent of employees at non-covered worksites.

There are some noteworthy differences in length of leave associated with different reasons for leave (see Appendix E, Tables 5.D and 5.E). Of those taking leave for their own serious health problem (excluding maternity-disability), about 51.6 percent of covered employees were on leave for 14 days or fewer, while 53.8 percent of non-covered employees were on leave for 14 days or fewer. Only 13.6 percent of covered employees and 20.4 percent of non-covered employees took leave for their own serious health condition that lasted longer than 12 weeks.

Maternity-disability leave, which represents only four to seven percent of all leave taken, tends to be longer. For employees in covered worksites, over 40 percent of such leaves last more than 12 weeks (85 days or more), and for employees at non-covered worksites about 45 percent of leave lasts more than 12 weeks (85 days or more). This type of leave may cover some time before the birth of a child, as well as post-partum recovery. Most leave to care for newborns is less than 12 weeks, with a significant proportion less than one week. Approximately half of both covered and non-covered employees who took leave to care for a newborn were off the job for less than a month (28 days), and more than one-third of non-covered employees took seven days or fewer (37.1 percent).

Most family leave to care for a seriously ill child, spouse, or parent lasts 14 days or fewer. For example, 90 percent of covered and non-covered employees take 14 days or fewer to care for seriously ill children, as did 80 percent of leave-takers who are caring for seriously ill parents. Of employees who take leave to care for a seriously ill spouse, around 80 percent of covered employees take leave that lasts

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[5] McGonagle et al., p. 19

14 days or fewer, and almost 90 percent of non-covered employees take leave that lasts fewer than 14 days.

The data also reveal some distinctive variations in length of leave among leave-takers (see Appendix E, Table 5.F). Women, as noted above, take longer periods of leave (with a median length of 15 days, and a mean of 41, as opposed to 10 days and 33 days, respectively, for men). This is not surprising, given that only women bear children, and that women are still more likely than men to be responsible for most kinds of family care. Men, however, take longer periods of leave for their own serious health conditions. Hourly (as opposed to salaried) workers, and by those with relatively lower levels of education are more likely to take leave lasting over 28 days.

Length of leave does not appear to vary significantly by income level. However, salaried employees are more likely to take shorter leave - up to seven days - (47.2 percent) compared with employees who are paid by the hour (39.5 percent).

In sum, most periods of leave are short. The majority of leave to care for a seriously ill child, parent or spouse) lasts fewer than 14 days, as does roughly half of leave taken to recover from one's own serious health condition. Parental leave and maternity-disability leave lasts longer.

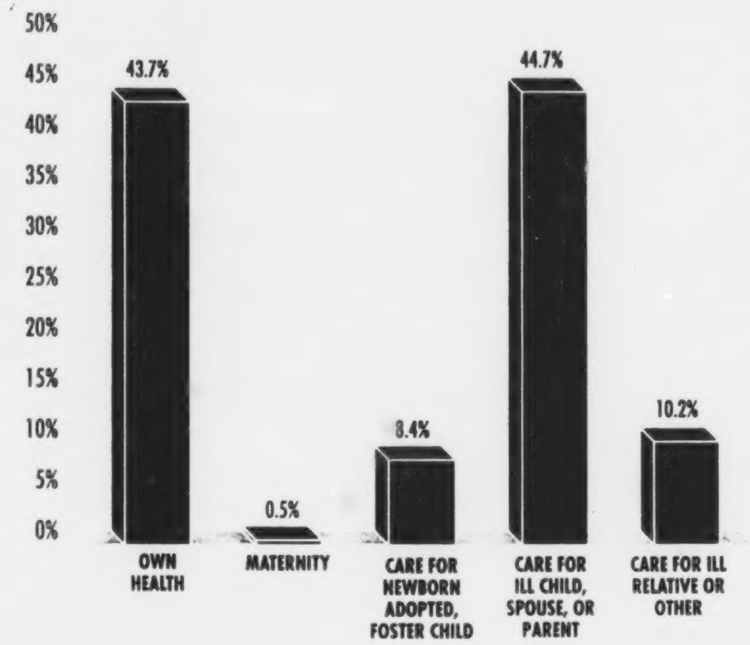
E. Employees Who Needed but Did Not Take Leave

According to the Employee Survey, 3.4 percent of employees said that they needed leave for a reason covered by the FMLA, but did not take it. As noted above (see Appendix E, Table 5.A), these leave-needers who did not take leave are especially likely to be African American, to be hourly workers, to have one or more children, to have low levels of family income and to have some college education, but less than a four-year degree.

The leave-needers surveyed are most likely to need leave for their own serious health condition or to care for a sick child, parent or spouse - over 40 percent in both categories (see Figure 5.4). Almost none of the workers in this sub-sample needed, but did not take, maternity-disability leave. In addition, almost ten percent of leave-needers report they wanted to take parental leave but did not. Despite demographic variations among leave-needers, it is not possible to link demographic variables on the particular patterns of need, given the small sub-sample sizes (see Appendix E, Table 5.G).

FIGURE 5.4

Reason for Needing Leave Among Employees Who Needed but Did Not Take Leave



SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995.

Note: Percentages do not sum to 100% because respondents could choose more than one category.

The importance of wage replacement to leave-takers is underscored by the finding that among the employees who needed but did not take leave, fully 63.9 percent were unable to take leave because they could not afford the associated loss of wages (see Figure 5.5, next page). This was far more frequently cited than any other reason given for not taking leave by those who needed leave (see Appendix E, Table 5.H)[9].

The fact that almost two-thirds of those who needed but did not take leave cite financial constraints as a reason for not taking leave is consistent with other research in thisarea. For instance, evidence regarding the impact of wage replacement on leave-taking is found in a study of state parental leave laws. In Rhode Island, which had both Temporary Disability Insurance(TDI) and a new leave law, the population of women with household incomes under $20,000 per year who took less than six weeks of leave after childbirth dropped to zero percent. This compared with an average of 19 percent for similarly-situated women in three states with no TDI coverage (that is,

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[9] It is also noteworthy that only nine percent of males reported that their employer denied their leave request, while 19 percent of female leave-needers cited this as a reason for not taking leave. While this subpopulation is too small to allow for inferences of statistical significance, the Employee Survey notes the need for further research to determine whether there is a significant relationship between sex and being denied a leave request. McGonagle, et al., p. 23.

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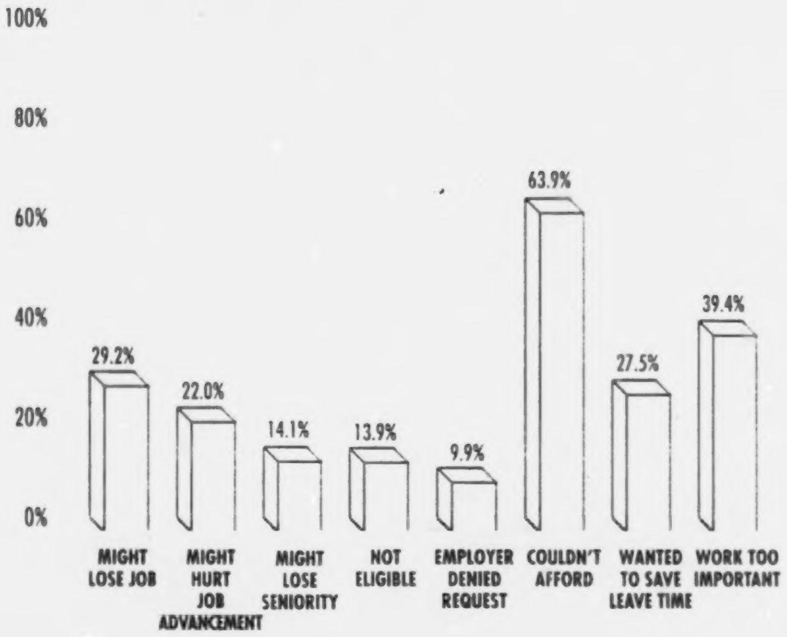
FIGURE 5.5

Reasons for Not Taking Leave Among All Leave-Needers[1]



SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN. SURVEY OF EMPLOYEES, 1995.

Note: Percentages do not sum to 100% because respondents could choose more than one category.

[1] Leave-needers constitute 3.4% of the employee sample, see Appendix E, Table 5.A.

no temporary wage replacement) for maternity-disability leave. In other words, having at least partial wage replacement plays an important role in making it possible - especially for low-income women - to take maternity disability leave at all, and to take longer periods of leave.

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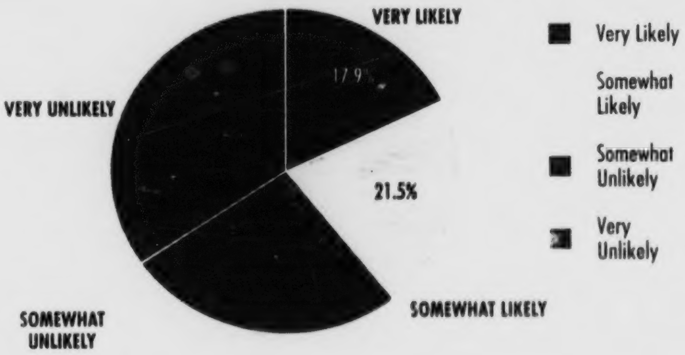
James T. Bond et al., *Beyond the Parental Leave Debate: The Impact of Laws in Four States* (New York: Families and Work Institute, 1991).

F. Expectations of Needing Leave Within the Next Five Years

As noted above, over 16 percent of employees surveyed took leave for a reason covered by the FMLA within the year-and- a-half period covered by the Employee Survey. However, as shown in Figure 5.6, about forty percent of all the employees state they are "very likely" or "somewhat likely" to need to take leave for an FMLA reason sometime within the next five years (15.4 percent of men and 20.8 percent of women thought it "very likely; 19.6 percent of men and 23.7 percent of women said it was "somewhat likely"). Combining the categories "very likely" and "somewhat likely" to need leave, the projected need for leave appears to be somewhat greater for women than men. (see Appendix E, Table 5.I).

FIGURE 5.6

Likelihood of Needing Leave Over the Next Five Years Among All Employees



SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995

To the extent that employees who project a need for leave within the next five years are able to attach reasons for which they would need leave, three noteworthy patterns emerged (see Appendix E, Table 5.J). First, not surprisingly, the proportion of employees projecting a need for leave for their own serious health condition increaseswith age; those over 65 years old are about four times as likely as the total population to project needing leave within the next five years for this reason.

Second, notwithstanding the fact that parental leave (to care for a newborn) is taken in about equal proportions by men and women leave-takers, women are about twice as likely as men to project needing leave for this reason within the next five years. Third, the most frequently cited reason for a projected need for leave in the future is to care for a seriously ill parent. Moreover, the projected need for eldercare leave differs across demographic categories. Women are more likely than men to project a need for eldercare leave. Finally, employees in the highest education and income categories are more likely than those with less education and income to project needing leave to care for seriously ill parents.

G. Methods Used To Cover Work

In trying to understand the patterns of leave-taking among employed Americans, it is important to consider what is happening in the workplaces of leave-takers while they are away from their jobs. Both employers and employees have raised concerns about how and whether the work of leave-takers would be covered during their absences. Both the Employee and Employer Surveys provide data that illuminate this issue.

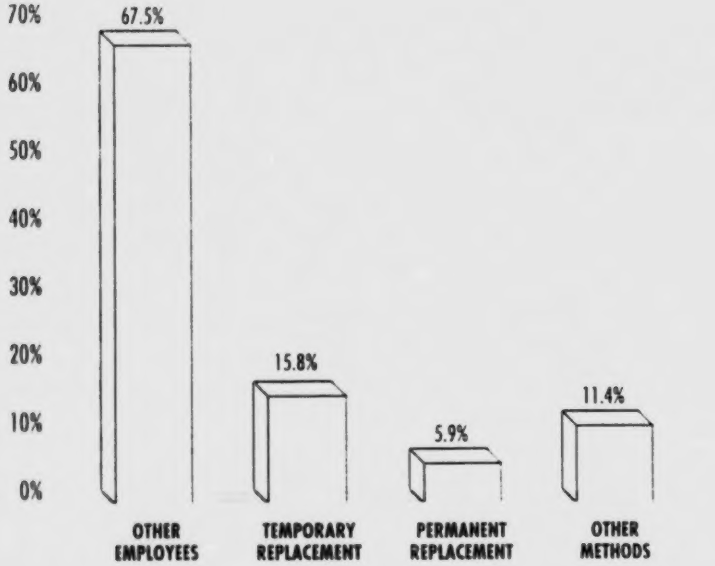
1. The Employee Perspective

The Employee Survey suggests that by far the most prevalent method used by employers to cover the work of employees who took leave is to assign their work temporarily to their co-workers. Figure 5.7 shows the percentage of leave-takersciting different methods of covering their work while they were on leave. The prevalence of assigning the work of leave-takers to other workers holds across all demographic variables (see Appendix E, Table 5.K).

Women are twice as likely as men to have their work covered by temporary replacements (20.7 percent compared with 9.1 percent). African American leave-takers are more likely than those in the other racial groups to have their work covered by temporary replace-

FIGURE 5.7

Methods Used to Cover Work of Leave-Takers While They Were Off the Job (As Reported by Employees)



SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995.

ments while they are on leave. Employees between 18 and 34 years old are more likely to have their work covered by permanent replacements (10.9 percent and 7.3 percent, compared with two to five percent of employees of other ages).

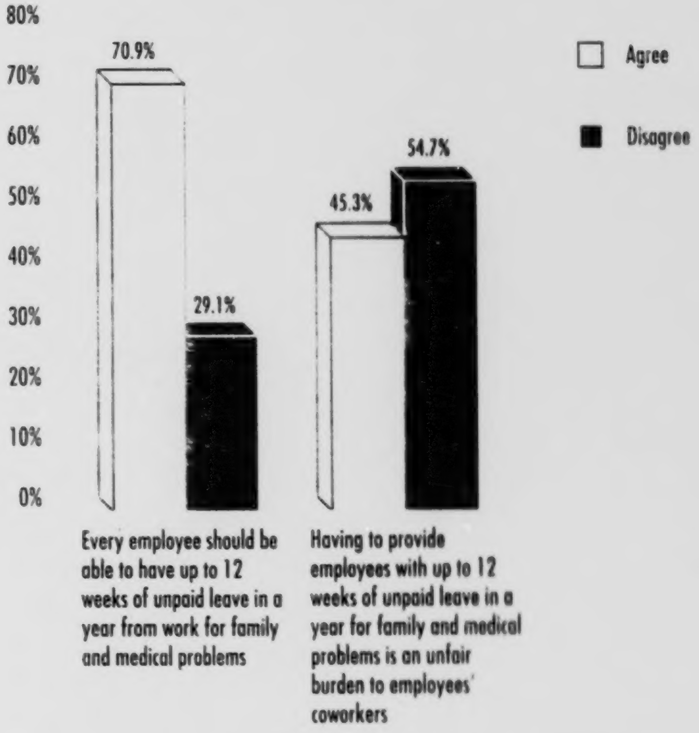
Those in the highest family income category ($75,000 or more per year) and those with the highest levels of education (BA or more) are least likely to have their work covered by co-workers, and most likely to cite "other" methods of work coverage. This is not surprising in light of the fact that high levels of income and education are positively correlated with the likelihood of holding managerial or professional positions. These employees are less likely to have co-workers who can cover their work, and are harder to replace either temporarily or permanently. These employees are also more expensive to replace, given that the training of new employees for higher-skilled positions takes longer and is more costly than training employees for lower-skilled positions. Not surprisingly, then, salaried employees are less likely than hourly workers to have their work assigned to other employees while they are on leave, or to be permanently replaced by their employers.

Employees in the lowest income category (family income below $20,000 per year) are most likely to state that permanent replacements were hired to cover their work. This probablyreflects the fact that lower-income workers are likely to be lower-skilled as well, thus easier and less costly to replace.

Despite the fact that the most common method of covering the work of leave-takers is to assign work to co-workers, as illustrated by Figure 5.8, the attitude of non-leave-taking employees toward leave is

FIGURE 5.8

Attitudes of Employees Concerning the Family and Medical Leave Act



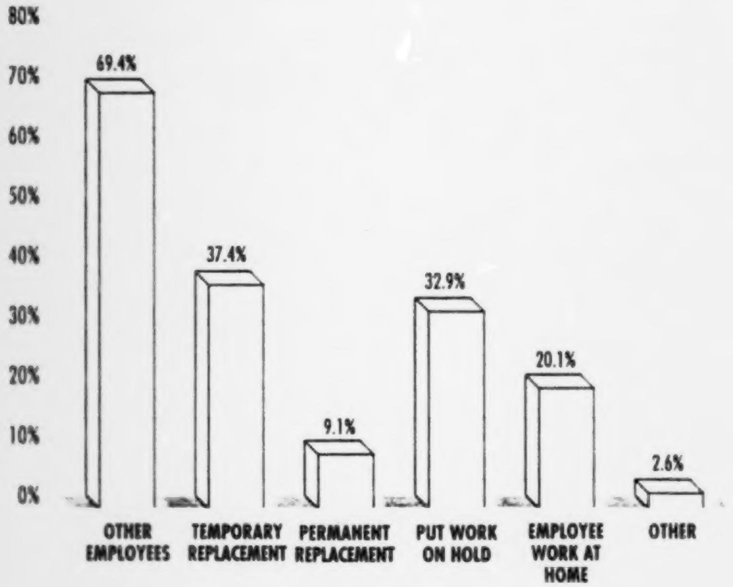
SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995

Note: The employees who were asked these questions are all non-leave-taking employees.

generally positive. A slight majority of employees who did not take leave (55 percent) feel that having up to 12 weeks of family and medical leave available to all employees would not pose "an unfair burden" on the co-workers of employees taking leave. More than two-thirds (70.9 percent) of employees agreed that "every employee should be able to have up to 12 weeks of unpaid leave in a year from work for family and medical problems." That is, while employees clearly feel some concern about the possibility of having their own workloads increase as a result of their co-workers taking leave, most favor having 12 weeks of leave available to all employees for family and medical reasons.

FIGURE 5.9

Method Used to Cover the Work of Leave-Takers While They Were off the Job (As Reported by Worksites)



SOURCE: AGUIRRE INTERNATIONAL TABULATIONS OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

Note: Percentages do not sum to 100% because respondents could choose more than one category.

2. The Employer Perspective

The Employer Survey results also suggest that assigning work to other employees is the most common method of covering leave-takers' job responsibilities (see Figure 5.9). About 70 percent of employers report having used this method. The Employer Survey suggests a higher incidence of hiring of temporary replacements for leave-taking workers than does the Employee Survey (37.4 percent). A significant percentage also report that leave-taking employees worked at home (20.1 percent).

The Employer Survey reveals some notable differences acrossindustrial sectors as to methods used to cover leave-takers work while they are on leave (see Appendix E, Table 5.L). Fully 87.5 percent of employers in manufacturing, but only 61 percent of those in services, state that they use other employees to cover the work of leave-takers. Employers from the retail sector are most likely to cite the use of permanent replacements, and those in manufacturing are especially likely to "put work on hold."

Size differences also emerge in the results of the Employer Survey with regard to how worksites cover the work of leave-takers (see Appendix E, Table 5.M). For instance, while only 61.8 percent of sites with fewer than ten employees use other employees to cover the work of leave-takers, between 96 and 99 percent of larger employers (those with 50 employees or more) do so. (A smaller number of employees may make it harder to spread around the work of leave-takers.) Also noteworthy is the fact that in worksites with 50 employees or more, the use of temporary replacements is especially prevalent. Finally, the smallest employers - with fewer than ten employees - are the most likely to put work on hold.

H. Continuation of Benefits and Wage Replacement During Leave

1. Continuation of Benefits

The Family and Medical Leave Act requires employers to continue health insurance (but not other benefits) during periods of leave for family or medical reasons. Both the Employer and Employee Surveys queried respondents on their practices and experiences with the continuation of benefits.

Over 95 percent of covered worksites report the continuation of health benefits during employee leave for FMLA reasons (see Figure 5.10, next page).[11] The percentage of non-coveredworksites that continue health benefits is lower across the board. For example, 86.3 percent of non-covered worksites continued health benefits for maternity-disability reasons while 69 percent continued health benefits for family leave (see Appendix E, Table 5.N).

While a large majority of leave-taking employees report that their benefits were continued, nine percent state they lost some form of benefit.[12] Of those losing

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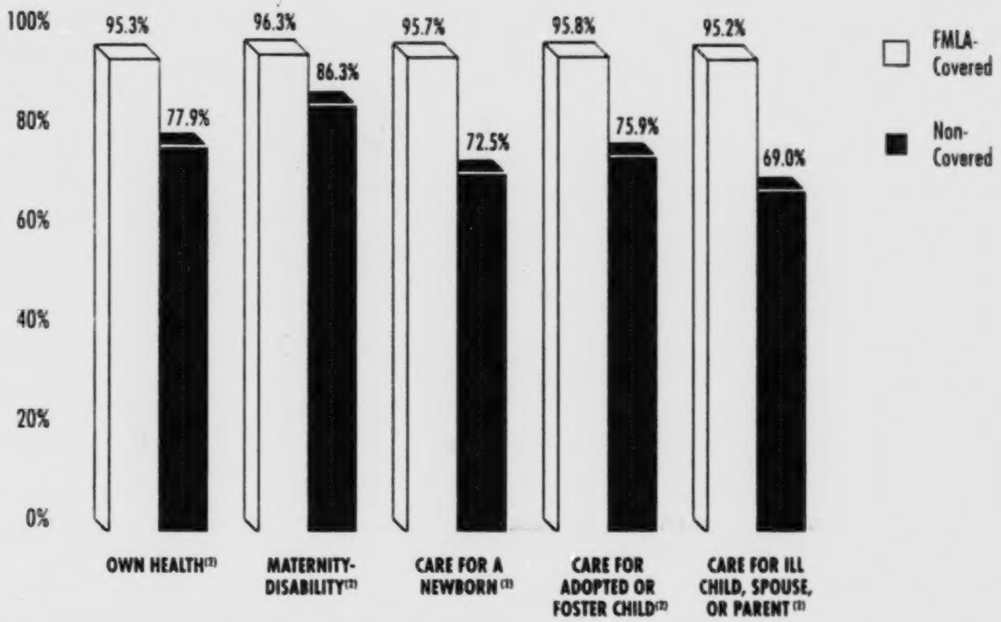
The fact that this figure is not 100 percent probably reflects a combination of employer non-compliance and the fact that some employees at covered worksites do not meet the eligibility requirements of FMLA and therefore are not guaranteed health insurance if they take leave

McGonagle, et al., p. 21

FIGURE 5.10

Continuation of Health Benefits During Leave: FMLA-Covered and Non-Covered Worksites [1]



SOURCE: WESTAT, INC. TABUATIONS OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

(1) Percentages in table refer to worksites that make up to 12 weeks of leave available (or that it depends on circumstances).

(2) Difference between FMLA-covered and non-covered worksites is significant at p< .05.

benefits, one-third lost their health insurance, which covered employers are required to provide for eligible employees during periods of leave. These findings mirror fairly closely what covered worksites report in the Employer Survey (see Appendix E, Table 4.E).

Non-whites, those with one or more children and non-salaried employees are especially likely to report having lost benefits.[13] Salaried employees and employees with partial or full wage replacement are comparatively unlikely to lose benefits.

Robert Groves and Katherine McGonagle, "Talk on the FMLA Employee Survey," Presentation at the Workshop on Family Leave, sponsered by the Board on Children and Families, National Academy of Sciences, October 23, 1995, p. 50 of handout.

Employees who took leave for maternity-disability and infant care are less likely to lose benefits while on leave than those who took leave for other reasons.[14]

2. Wage replacement

While the FMLA does provide leave with full job protection, aimed at ensuring employment security for covered employees, the Act does not require employers to replace any of the wages lost by a leave-taker. However, an eligible employee may elect, or an employer may require an employee, to substitute accrued paid leave (i.e. vacation leave, personal leave or sick leave) for any portion of the 12 weeks of unpaid FMLA leave. This section presents data from both the Employer and Employee Surveys on various measures to replace some or all of the wages of leave-taking employees. It also presents data on how leave-taking workers cover their lostincome, to the extent that they lose income while they are on leave.

To interpret the findings correctly, it is important to reiterate that neither survey distinguished between wage replacement specifically for family and medical leave, on the one hand, and pay for personal leave, sick leave or vacation, on the other hand. Thus, it must be inferred that the wage replacement reported in both surveys in large measure reflects personal, sick and vacation pay (traditional and long-standing employee benefits in many companies), as opposed to pay specifically designated for newer types of leave, such as parental and family leave (provided by the FMLA). Further research is needed to clarify the specific sources and types of voluntary wage replacement received by some FMLA leave-takers.[15]

a) Extent of Wage Replacement

A significant percentage of leave-taking employees (46.7 percent) report that they received full wage replacement, and an additional 19.6 percent report they received partial pay during their leave. Here, as in other dimensions of comparison, worksite coverage by the Act may make a difference (see Figure 5.11, next page). Fully 51.9 percent of those working in covered worksites received full pay while on leave, and 21.5 percent received partial wage replacement[16] (See Appendix E, Tables 5.O and 5.P). The remaining 26.6 percent report that they received no wage

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[14] Ibid.

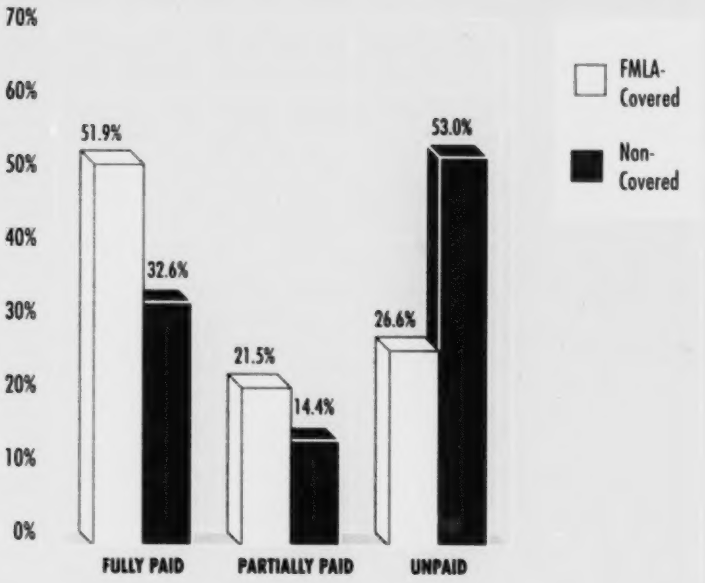
[15] See Kirsten S. Wever, Assessing Temporary Wage Replacement for Family and Medical Leave (Report commissioned by The Commission on Leave, October 1995) for a discussion of the extent of voluntary wage replacement before the Act's passage.

[16] As noted in the Employee Survey, the relationship between working for a covered employer and receiving some wage replacement is statistically significant.

FIGURE 5.11

Leave-Takers: Extent to Which Leave Was Paid

(FMLA-COVERED AND NON-COVERED WORKSITES)



SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995.

replacement whatsoever. By contrast, over half of the employees working at non-covered sites received no wage replacement at all. The difference in the availability of wage replacement to employees working in covered and non-covered worksites holds true across different reasons for leave-taking.

Those at covered worksites taking leave for their ownserious health condition are most likely to have had full or partial wage replacement (probably in large measure sick pay). There is a statistically significant relationship between the reason for taking leave and the likelihood of receiving wage replacement: maternity-disability leave tends to be unpaid or partially paid, while all other types of leave are significantly more likely to be fully paid.[17] While the source of wage replacement for most kinds of leave is probably either sick pay, vacation days or both, the source of wage replacement for maternity-disability leave-takers is probably either state Temporary Disability Insurance (TDI) (available in five states, including the populous states of California, New York and New Jersey) or a disability insurance plan voluntarily provided by some private sector employers.[18]

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[17] McGonagle et al., p. 21

Given that the Act does not require employers to replace leave-taking workers' wages, at first glance it appears surprising that a significant proportion of those taking parental and family leave receive some wage replacement. However, as noted, some - possibly most - of this wage replacement is in the form of sick, personal or vacation pay applied during periods of family and parental leave.[19] In some cases, employees are able to work with their employers to put together "packages" that combine FMLA and other sorts of leave with some wage replacement measures.

There are some noteworthy demographic variations as to the likelihood that a leave-taker will receive wage replacement (see Appendix E, Table 5.Q). Over 75 percent of salaried employees receive full wage replacement. Unionized employees, those with the highest levels of household income and education and those between 50 and 64 years of age are also especially likely to receive wage replacement. Close to half the youngest employees and those with annual family incomes of less than $20,000 received no pay. This is alsotrue for between 42 and 46 percent (depending on the group) of Latinos, hourly employees and those with no college education.

The most striking difference as to employees' level of wage replacement while on leave is found with respect to education. The likelihood of an employee's having received full or partial wage replacement increases sharply as education level rises. While about one-third of leave-takers with a high school education or less are fully paid during leave, 63.7 percent of those with a college degree or more are fully paid during leave.

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[18] The Employee Benefits Survey conducted by the Bureau of Labor Statistics, U.S. Department of Labor distinguishes between long-term disability insurance plans provided to 26 percent of employees, and sickness and accident insurance plans provided to 26 percent of full-time employees in small private-sector establishments and 44 percent of full-time employees in medium and large private-sector establishments.

[19] For example, some state governments and many "family-friendly" companies allow employees to use up their own sick and/or vacation time and pay in order to care for ill family members.

The relationship between the level of wage replacement and income closely parallels the findings with respect to education. While 79 percent of those with household incomes of $75,000 per year or more received full or partial wage replacement, fully 50 percent of employees with incomes of $20,000 per year or less received any pay during their leave. In other words, lower- skilled, poorer workers are far less likely to have wage replacement. Consistent with this is the finding that hourly employees, who are more likely to have lower incomes and lower levels of education, are four times as likely as salaried leave-takers to report receiving no pay during their leaves.

Several other noteworthy differences emerge with regard to wage replacement. Men are more likely to receive full pay during their leave than women (53.5 percent of men, compared with 41.7 percent of female leave-takers). Older workers (those 50 to 64 years old) are also more likely than younger employees (those 18 to 24 years old) to receive full or partial wage replacement(81.6 percent compared with 50.9 percent).[illegible] As noted, Latino leave-takers are less likely than those in all other racial/ethnic categories to receive full orpartial wage replacement while on leave.

b) Measures Used to Cover Lost Income During Leave-Taking

As the previous section makes clear, while most leave-takers receive some wage replacement while on leave, many, and in some demographic groups, most, do not. This raises the question of how these employees make ends meet on significantly reduced budgets during periods of leave. Figure 5.12 shows that "limiting extras" and reliance on savings are the methods most commonly used by leave-takers who are partially paid or unpaid to cover lost wages.

Not surprisingly, differences in family income are the most reliable predictor of differences in how employees cope with the loss of income during periods of leave (see Appendix E, Table 5.R). Employees with higher family incomes are much less likely than low-income leave-takers to borrow money, to go on public assistance, to limit "extras," or to put off paying bills. Those with family incomes of $20,000 per year or less are at least four times more likely than those with higher incomes to

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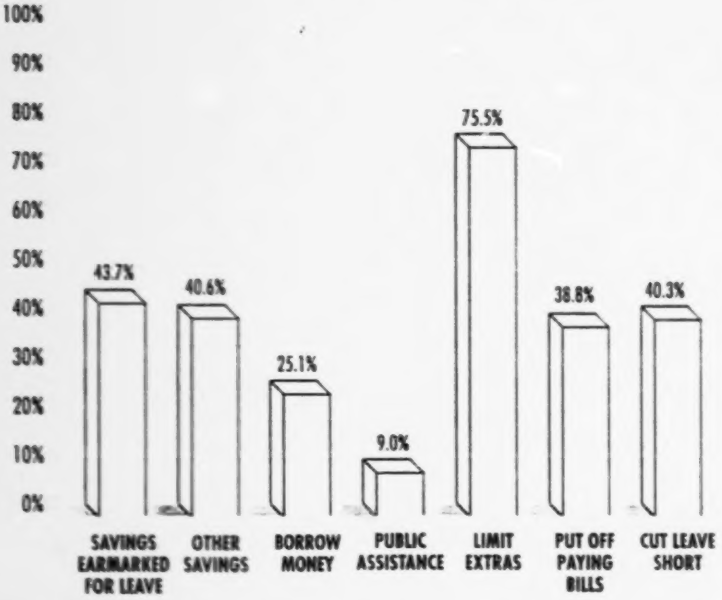
[illegible] This makes sense in light of the fact that men and older employees are more likely to have higher levels of income and education, more likely to be salaried employees, and more likely to take leave for a serious health condition.

FIGURE 5.12

Leave-Takers[1]: Methods of Covering Lost Wages Due to Leave-Taking



SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995.

Note: Percentages do not sum to 100% because categories are not mutually exclusive.

[1] Only leave-takers who report they were partially paid or unpaid during leave were asked about methods of covering lost wages.

go on public assistance in order to deal with lost income (20.9 percent compared with about five percent or less in all other income categories).[21]

As education rises, it becomes easier for leave-takers to cover lost wages. For instance, those with at least four years of college education are less likely to put off paying bills or cut leave short. Conversely, those with a high school education or less are more likely to limit extras and go on public assistance. Unionized employees are less likely to cut leave short or go on public assistance than non-union employers in order to cover wages lost due to leave-taking.

While further analyses of these data are needed to determine precisely what demographic characteristics cluster around this outcome, it seems probable that a sizable proportion of this group is accounted for by single earner families with children.

Differences also emerge with regard to other demographic variables. Based on employees' reports of their strategiesfor covering lost wages, white leave-takers are less likely to rely on savings to cover wages than those in other racial/ethnic categories. Women are more likely than men to go on public assistance, to limit extras and put off paying bills. The youngest leave-takers are more likely to go on public assistance and borrow money than are older workers. In addition, women are more likely than men to cut leave short. As noted in the Employee Survey, the relationship between age, sex and certain methods of covering lost wages (notably, going on public assistance) is statistically significant.[22]

I. Job Protection and Returning to Work

Some employers have expressed concern that a federal leave law would lead to abuses by leave-takers, particularly with regard to decisions by employees not to return to work. The Family and Medical Leave Act requires that workers be granted their same or equivalent jobs with equivalent pay, benefits and other terms and conditions of employment when returning to work following their leave. Employers have been concerned that there is no guarantee for them that leave-takers will actually return. Employees have been concerned that, without job guarantees, taking family and medical leave puts their jobs at risk. Both the Employee and Employer Surveys shed light on this issue.

1. Data from Employers

The Employer Survey shows that most worksites report having all leave-takers return to their jobs (67 percent).[23] Of the 33 percent of employers reporting an employee not returning to work, the great majority (86.6 percent) had only one leave-taker not return to work, 7.2 percent had two leave-takers not return, and 6.2 percent had more than two leave-takers not returning to work.[24]

When an employee takes leave and fails to return to work, the employer has the right under the Act to reclaim health insurance benefit payments made during the

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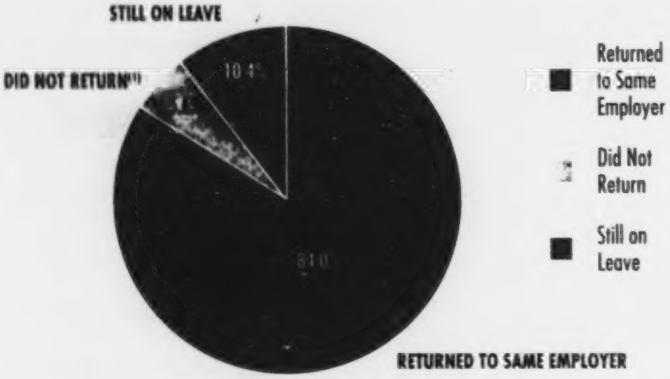
[22] McGonagle, et al., p. 22. Further analysis would help clarify the extent to which certain demographic characteristics are associated with certain methods of covering lost wages.

[23] David Cantor, et al., The Impact of the Family and Medical Leave Act: A Survey of Employers, (Rockville, MD: Westat Inc., 1995) p. 4-14, Table 4-12.

[24] Ibid, p. 4-14, Table 4-13.

FIGURE 5.13

Leave-Takers Returning/Not Returning to Work



SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995.

(1)"Did not return" includes leave-takers who left the workforce and those who went to a new employer after their leave.

period of leave. However, only about seven percent of employers in this category (that is, seven percent of the 33 percent, or 2.3 percent) report having pursued this course.[25]

2. Data from Employees

The great majority (84 percent) of leave-takers stated that they returned to work at their same employers, while six percent did not return (this included leave-takers who report taking a job with a new employer and those leaving the labor force) and ten percent remain on leave (See Figure 5.13). There are several factors that could account for employees not returning to their same employer, for instance, employees may not be offered their jobs back, or they may choose not to return.

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[25] Ibid. p. 4-14, Table 4-14

Employees in the lowest family income category who had returned to work (less than $20,000 annually), and leave-takers with no wage replacement at all, are most likely not to return to work to the same employer (see Appendix E, Table 5.S). This suggests that a leave-taker's level of compensation influences the decision about whether to return to work. Conversely, employees with higher family incomes, working at covered worksites and receiving full wage replacement are more likely to return to their same employers. Not surprisingly, then, salaried employees and unionized workers are more likely to return to their employers.

Leave-takers with full wage replacement are far more likely than those with either partial or no wage replacement to return to their employers after leave. Indeed, 94.2 percent of those leave-takers who were fully paid, (compared with 73.8 percent of those who were partially paid and 76.5 percent of those who were not paid at all) returned to their same employer after taking leave.

Finally, people working at worksites that are not covered by the Act are more likely than employees at covered worksites to not return to the same employer (10.9 percent compared with 1.9 percent at covered sites). This difference is statistically significant even taking into account variables like sex, age and income, which influence whether or not employees return to work, and whether or not they return to their old employer. Thus it appears that non-covered employers may face higher rates of employee turnover because they do not offer all the benefits associated with job-protected family and medical leave under the new law.

J. Summary

The Employer and Employee Surveys, together with the testimonial evidence from the Commission's public hearings, clearly indicate that family and medical leave makes a significant difference to employees trying to sustain their family and work lives at times when their own serious health problems or the needs of their dependents become pressing.

The demand for leave among employees is significant, and the FMLA expands leave access to workers who might not otherwise be able to take leave, and might therefore have to make significant sacrifices at home, or to lose their jobs in order to deal with family and medical needs. More than that, the Act creates the conditions that make leave possible for many employees by providing job guarantees andrequiring employers to continue health benefits to employees on leave. Leave-takers report taking leave for a variety of reasons: their own serious health condition (59 percent); care for a newborn/adopted child (almost 15 percent); and care for an ill child, parent, or spouse (almost 20 percent). The reasons for leave-taking by employees at covered and non-covered worksites are very similar, suggesting that the need for leave is independent of the availability of job-protected family and medical leave.

The Employee Survey indicates that some employees need leave, but are still unable to take it. Over 40 percent of this group report needing leave for their own serious health condition or leave to care for a seriously ill family member. The major reason this group cites for not taking leave is financial. Sixty-four percent report they could not afford to take the leave they needed.

The Employee Survey also illustrates that the demand for leave is likely to continue to be substantial: among those who had neither taken nor needed to take leave, two-thirds of employees anticipate that they are very likely or somewhat likely to need leave at some time in the next five years. These projections highlight a growing need for eldercare: the reason for leave most likely to be cited by those anticipating a need for leave was to care for a seriously ill parent.

The Employer and Employee Surveys indicate that employees who need leave do not, in general, need very long leave. Most periods of leave were short, and were taken by employees who needed time off from work for reasons connected to their own serious health problems. Almost all leaves taken fell within the Act's 12-week period. Women's leave was somewhat longer because of the medical and infantcare requirements of giving birth, while men took longer leave than women for their own serious health conditions. Significantly, among leave-takers, men's role in family caregiving, across both categories of family leave (parental leave and leave to care for a seriously ill parent, child, or spouse), is currently comparable to that of women (excluding women's leave for maternity-disability).

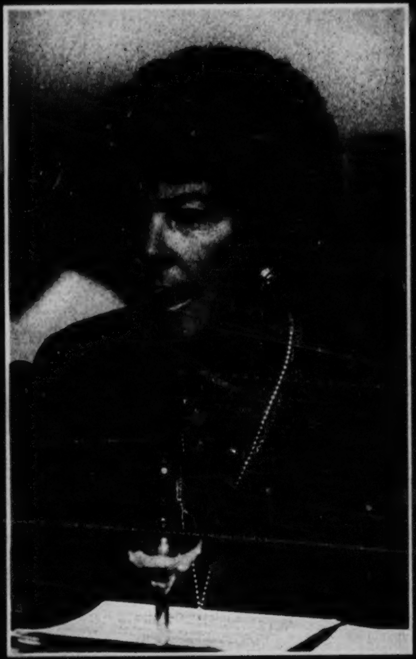
Most leave-takers have their work covered by co-workers while they are on leave, though many employers also state that they hire temporary replacement workers to help cover the job duties of leave-takers. A majority of those employees who did not take leave do not feel burdened by having to cover the work of leave-takers, and well over two-thirds believe that every employee should have up to 12 weeks a year of unpaid family and medical leave.

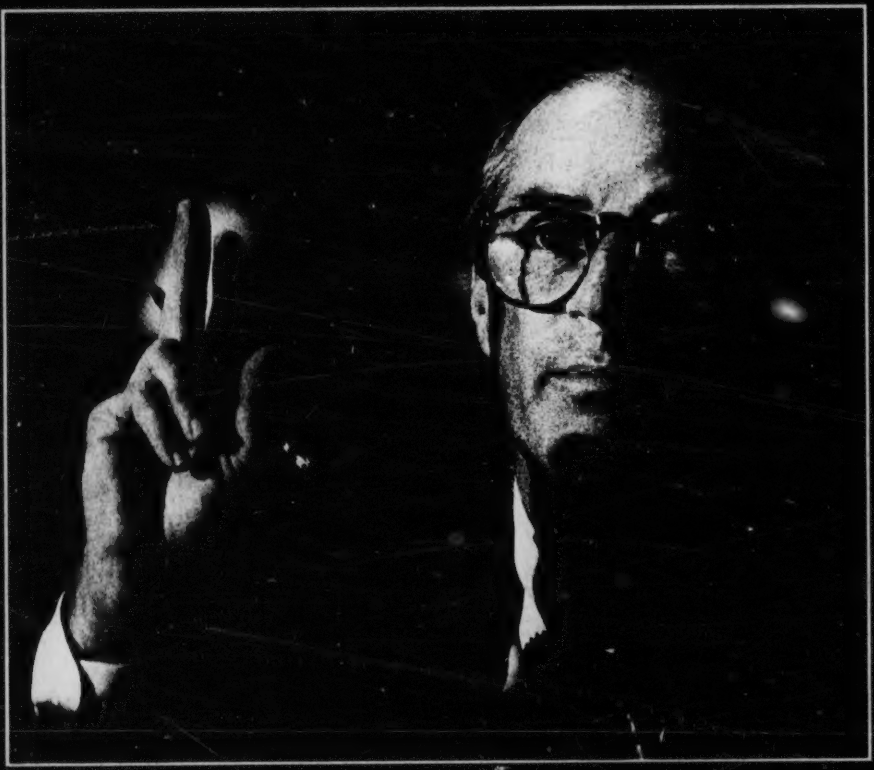
Most leave-takers receive some wage replacement while they are on leave. Since unpaid leave can be a significant burden for workers, the existence of some voluntary wage replacement probably makes a profound difference in many employees' experiences of taking leave. This is not to diminish the importance of job-protected unpaid leave to many employees, but rather to point out that the existence of some wage replacement, regardless of the source, is extremely important in making it possible for many employees to take leave in the first place.

As noted above, much of the wage replacement captured by these two surveys either includes or consists entirely of forms of income that are independent of the FMLA, for instance vacation pay, disability insurance or sick pay. It therefore seems likely that some substantial portion of employers' financial outlays (in the form of wage replacement for leave) would occur even in the absence of the Act. Additional research and cost projections regardingwage replacement must take these pre-existing forms of wage replacement into account.

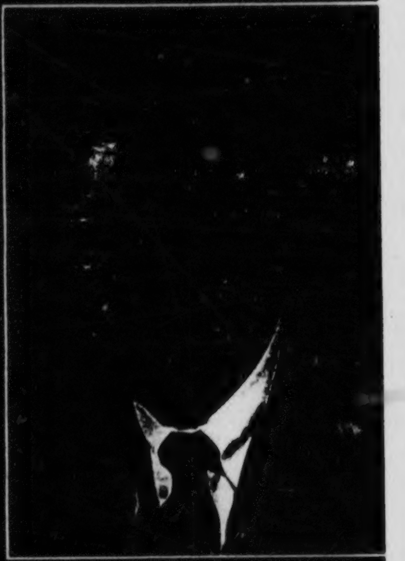
Most covered employers continue to provide health benefits to workers while they are on leave and most offer job-guaranteed leave. However, there appears to be some level of employer non-compliance on both counts. The great majority of leave-takers return to work for their old employers after their leave is over, although a small minority does not. Once again, leave-takers at covered worksites with the lowest levels of family income, in hourly positions and so on, are most likely not to return to work. Women are slightly more likely than men not to return to work. This can be attributed to several factors: women are more concentrated in lower-income jobs, infant care is difficult to find and women are still more likely to have primary responsibility for family caregiving.

The overview of leave-taking presented in this chapter raises many issues about a series of more specific effects of the Act on employers and employees. The next two chapters explore these in detail, considering the overall impact of the FMLA and leave policies, looking first at a variety of costs and benefits to employers (Chapter VI) and second at the experience of leave-taking from the viewpoint of employees (Chapter VII).





Assessing the Impact of Family and Medical Leave Policies on Employers



A. Introduction

[illegible]

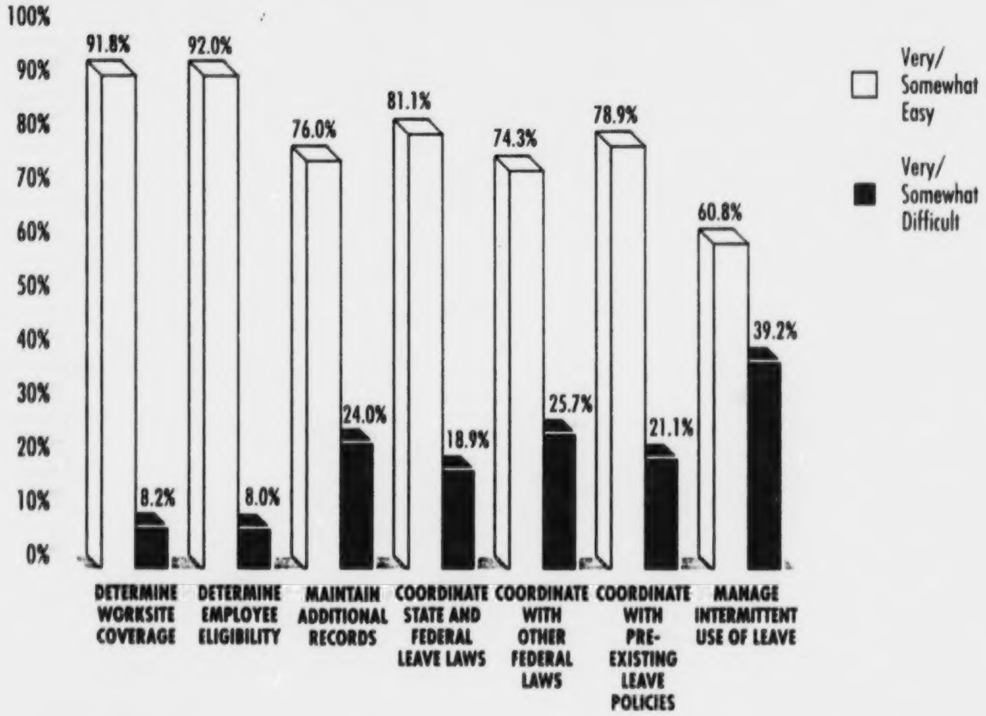
B. Administration of and Compliance with the FMLA

[illegible]

[illegible]

FIGURE 6.1

Ease of Performing FMLA Administrative Activities: The Impact of FMLA on Covered Worksites



SOURCE: AGUIRRE INTERNATIONAL TABULATIONS OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

ployee eligibility (see Figure 6.1). These employers report having slightly more trouble with additional record-keeping necessary for the Act and with the coordination of state and federal leave laws, other federal laws and other leave policies - with between 74 percent and just over 81 percent of employers reporting these activities to be "somewhat" or "very easy." A sizable majority of covered worksites report no problems administering the Act in any one of the categories cited.

Testimony before the Family Leave Commission by various employer representatives confirms the finding that the majority of sites from every size category find administrative responsibilities under the Act to be "easy" or "somewhat easy" to carry out (see Appendix E, Table 6.A). Thus, for instance, Diane Duval, Corporate Benefits Manager from the Lotus Corporation, a computer software company, described the modifications in paperwork to comply with the Act as "very minimal."[3] Ms. Duval also noted that "due to the broad work/family initiatives we already had in place in 1993, we had only to make modest accommodations to our existing leave policies in order to comply ... [and] in terms of administering the program, we have found the U.S. Department of Labor's model forms extremely helpful."[4]

The area with which covered sites appear to have the greatest difficulty is the management of intermittent leave under the FMLA. The Act permits eligible employees to take leave "intermittently or on a reduced leave schedule" under certain conditions. By its very nature, intermittent leave may require more administration because it offers employers and employees the opportunity to negotiate both the timing and the schedule of the proposed leave. Under the FMLA, intermittent leave may be taken for the birth of a child or the care of a newborn, newly-adopted or foster child, if the employer grants the employee's request for such a schedule. Leave for a serious health condition (either the employee's or a family member's) may be taken intermittently or on a reduced leave schedule when "medically necessary."[5]

The majority of employers (60.8 percent) find it either "very" or "somewhat easy" to manage the Act's intermittent leave provisions. However, 39.2 percent find it to be either "somewhat difficult" or "very difficult." That is, the proportion finding intermittent leave difficult to administer - while still a minority - is higher than the percentage reporting difficulties with any of the other administrative aspects of the law covered in the survey.

The hearing testimony sheds light on why some employers have trouble administering intermittent leave. Elizabeth Pedrick Sartain, a vice president of Southwest Airlines, testified that the company does "not have any problem with employees taking long-term leaves of absence. They don't take it unless they need it." But

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[3] Testimony of Diane Duval, Lotus Corporation, at Washington, DC Hearing, August 4, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 77.

[4] Ibid, p. 24.

[5] An employer may request that an employee support an intermittent leave request for a serious health condition with certification from the health care provider. Employees must make a reasonable effort to schedule their foreseeable intermittent leave so as not to disrupt the employer's operation unduly, subject to the approval of the health care provider. Employers may assign employees temporarily to alternative positions with equivalent pay and benefits that better accommodate such recurring periods of intermittent leave.

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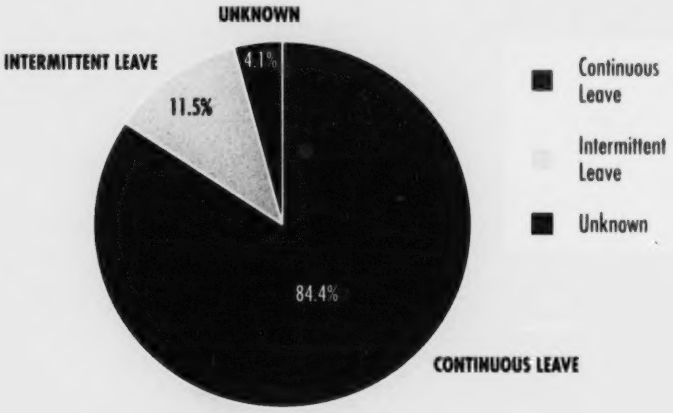
problems arise with intermittent and reduced leave aspects of the law because the company "control[s its] attendance through a reward and incentive program and also an attendance control program." In this case, the "major administrative burden ... [is] the increased use of the intermittent leave for absences that would have ordinarily been routine absences that we would have covered under our sick plan."[6] Another complaint, registered by a representative of Lotus (also quoted above), was that while in general the family and medical leave policy under the FMLA was "extremely manageable," the "administrative complexities of intermittent leave" created difficulties in "developing an efficient, automated tracking mechanism for this type of leave."[7]

FIGURE 6.2

Leave-Takers: Continuous vs. Intermittent Leave



SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995.

On the other hand, some testifying employers found the intermittent leave provisions to be an asset. Linda Siebert Rapaport, a manager from First Chicago Bank, for example, described intermittent leave as "extremely important for our working parents who need to take time off, for example, to take their children for treatments or for their parents as well." She found intermittent leave to be a "useful tool along with our emphasis on flexible work arrangements to be able to gradually return people to work in the most effective way possible." Here, the FMLA is seen as "part of a wide range of other family-friendly strategies that we are using at this time."[8] In further testimony, Elizabeth Carlson, an employer representative from the National Futures Association, a large manufacturing organization, described in approving terms an employee "who takes intermittent leave to take care of her husband. I have seen her return to work after spending many hours at the hospital with him, caring for him, supporting him, being with him at a very crucial time." This representative went on to state: "Particularly with intermittent leave, we work closely with our employees to try and work out a program that enables them to fulfill their obligations not only to themselves and their family, but also to fulfill their obligations to our company as well."[9]

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[6] Testimony of Elizabeth Pedrick Sartain, Vice President, People Dept., Southwest Airlines, at Chicago, IL Hearing, U.S. Commission on Leave Public Hearing Transcript, pp. 81,112.

[7] Duval, p. 65.

[8] Testimony of Linda Seibert Rapaport, Assistant Vice President, First Chicago Bank, at Chicago, IL Hearing, May 8, 1995, U.S. Commission on Leave Public Hearing Transcript, pp. 25-6.

While some employers have expressed concerns about the use of intermittent leave, this type of leave-taking is a small proportion of leave-taking overall. The Employee Survey finds that 84 percent of employees take leave continuously, while 11.5 percent take it on an intermittent basis (see Figure 6.2). Leave is taken on an intermittent basis (rather than all at once) by just under a quarter of leave-takers caring for an ill child or spouse and 17 percent of those caring for an ill parent. Eleven percent of employees who take leave to care for their own serious illness also take leave on an intermittent basis rather than all at once (see Appendix E, Table 6.B).

Inset 6-1

Valerie M. Pinkert, Vice President and Manager, Bank of America

While complying with the principles of the Act has not been a problem, the administrative aspect of complying with the technical and complex regulations has proven to be a great challenge. For example, while the Act encourages employers to go beyond the law in developing their own policies, employers who have generous leave programs that go beyond what is required under the law receive no accommodation under the Act for their further efforts.... We also believe that the regulations could be streamlined and modified in ways that would help to alleviate some of these difficulties.

Testimony of Valerie M. Pinkert at San Francisco CA Hearing, June 26, 1995, U.S. Commission on Leave Public Hearing.

Returning to the broader range of administrative activities associated with the Act, the survey reveals no noteworthy differences between employers from different industrial sectors. When covered worksites are broken down into size categories - small (having fewer than 50 employees), medium sized (50 to 250 employees) and large (with more than 250 employees) - the data suggest that the degree of difficulty in administering the Act grows with the size of the worksite (see Appendix E, Table 6.A). The larger the site, the greater degree of difficulty: worksites with 1,000 employees or more are more likely than those with between 250 and 1,000 employees to report difficulty coordinating the FMLA with pre-existing leave laws (see Inset 6-1); and over three-fourths of those with 1,000 employees or more report difficulties implementing the Act's intermittent leave provisions.

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[9] Testimony of Elizabeth Carlson, Director of Human Resources, National Futures Association, at Chicago, IL Hearing, May 8, 1995, U.S. Commission on Leave Public Hearing Transcript, pp. 356.

In short, smaller covered worksites are more likely than larger ones to find the administration of the Act relatively easy. On the one hand, this may seem counterintuitive since larger worksites also tend to have larger and more professional human resource management staffs. That is, one might hypothesize that the administration of the Act would be easier in larger worksites, given the well-organized presence of this function within most large worksites. On the other hand, larger worksites are also more likely to have leave-takers, to be covered by other laws, to have pre-existing formal policies regarding leave, and so on. As such, the Act may require more overall administrative adjustment and realignment at larger worksites. These factors could account for the finding that larger covered worksites - especially the largest sites surveyed - have more trouble than small and medium-sized covered worksites with these administrative functions.

The hearing testimony indicates that at least some of the difficulty experienced by larger employers in administering the Act can be attributed to start-up costs. Valerie M. Pinkert, the vice president and employee relations manager of Bank of America, for example, noted that "[b]ecause we're so large and in 48 states, we have to go through steps that smaller organizations that are in a couple of states don't. [In a small operation, a]ll ten managers can come to a training class. When you've got 90,000, how do we best do this in a cost-effective way?"[10] Catherine A. Morris, a human resource manager from ARCO, a large firm in the oil and gas industry, found it burdensome "mak[ing] sure that every unit everywhere in the country understands exactly what the Act requires, and is able, then, to do what's legally required." She went on to note that the letter of notification requirements to employees could be cumbersome, and that "sometimes it's caused confusion ... with 23,000 employees, the increased paperwork has become very burdensome."[11]

The fact that smaller worksites are more likely to manage human resource policies informally may also partially explain the size differences relating to perceived administrative difficulties. In smaller worksites, administrative difficulties encountered as a result of the Act would most likely be experienced by individual supervisors or managers making leave-related decisions, rather than by a larger formal department charged with administering the Act.

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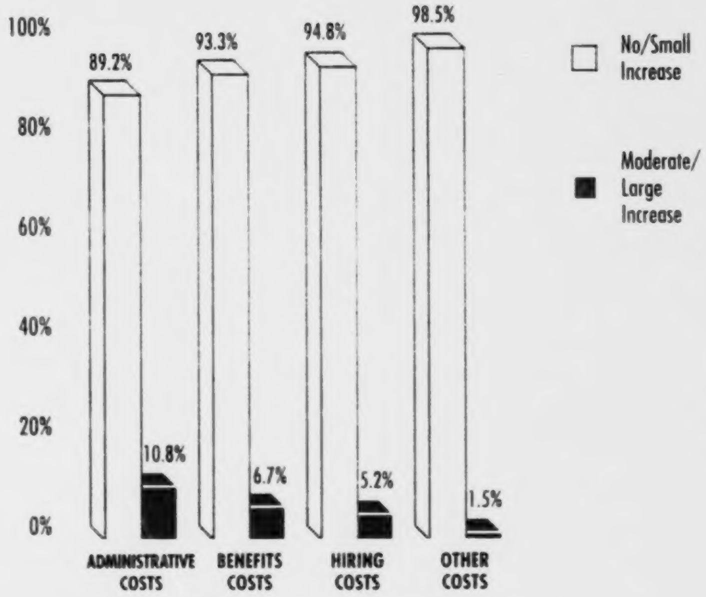
[10] Testimony of Valerie M. Pinkert, Vice President and Manager, Employee Relations, Bank of America, at San Francisco, CA Hearing, June 26, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 52

[11] Testimony of Catherine A. Morris, Human Resources Manager, ARCO, at San Francisco, CA Hearing, June 26, 1995, U.S. Commission on Leave Public Hearing Transcript, pp. 68,96,102

Historically, when federal standards that affect business administration (especially, but not exclusively, human resource management issues) are first put into place, organizations experience a learning curve effect. They tend to have more difficulties administering policies in the early phases of implementation, and less trouble over time as the processes involved are adjusted to fit the circumstances of a specific organization. Further research regarding the administrative activities related to the Act five years or more after its implementation would be useful for assessing how much of the difficulty reported in the first two years is due to "start-up" problems that will diminish over time.

FIGURE 6.3

Cost to Employers: Impact of FMLA on Covered Worksites



SOURCE: AGUIRRE INTERNATIONAL TABULATIONS OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995

C. Costs to Employers

Covered employers were asked to rate the extent of cost increases they had experienced in four broader areas: general administrative costs; the cost of continuing health benefits to employees taking leave; costs associated with hiring and training replacements for employees taking leave; and "other" costs. The great majority report no cost increases at all, or only small cost increases, in all four categories (see Figure 6.3). With respect to administrative costs, 89.2 percent of covered employers report no increase or only a small increase in costs. Over 90 percent of covered worksites experience no or small cost increases associated with continuing employee benefits. No or small increases in costs are reported with respect to hiring and training by 95 percent of employers. Finally, 98.5 percent report no or small cost increases in "other" areas. Manufacturing establishments are slightly more likely to report moderate to large increases than the sample as a whole.[12] Otherwise sectoral distinctions are not significant.

With regard to size, the larger sites look somewhat different than the smaller sites (see Appendix E, Table 6.C). In general, the highest costs experienced by covered employers in all size categories fall into the category of administrative costs and the lowest costs fall into the "other costs" category. With respect to administrative costs, covered employers with 25 employees or fewer are more likely to report small cost increases or no cost increases at all (90.7 to 100 percent) than larger employers.[13] Between about 11 and 25 percent of covered employers with 26 to 250 employees report modest or large increases in administrative costs. Among the largest employer group, with 1,000 employees or more, 58.3 percent report small or no cost increases, but 41.7 percent report moderate or large increases in administrative costs.

Inset 6-2

Elliott Lehman, Co-Chairman Emeritus, Fel Pro Corporation

There are expenses involved in administering [the Act]. They are not great. In our case, we estimate that it takes ten percent of one of our human resource personnel. But there are other concomitant expenses when trying to deal with a person who takes the leave. How do we cover them in the plan, what will the supervisors have to do and things like that.... [which total t]en percent of one person's time in our human resources department.

It is estimated, not even including the administrative costs of finding a replacement, that it takes a year and a half for a [replacement] to get up to the speed of the person who has left. And that's all the way through. And so that is why when we examine these kinds of data we have to balance them out: What did you have? What does it cost? What is the cost of the 13 weeks or the 12 weeks, which nobody takes because - let's face it - when you have unpaid leave in today's society, who can afford to take off that long of time if they have to balance their own personal budgets?

Testimony of Elliott Lehman at Chicago IL Hearing, May 8, 1995, U.S. Commission on Leave Public Hearing.

Increases in benefits costs are also most likely to be reported by the largest employers, with 28.9 percent stating they experience modest or large increases, compared with 11.2 percent or less of employers with up to 99 employees.

David Cantor, et al., *The Impact of the Family and Medical Leave Act: A Survey of Employers* (Rockville MD: Westat, Inc., 1995), pp.4-8, Table 4-6.

Some employers who have fewer than 50 employees at their worksite are considered "covered" under the FMLA because of the 75 mile radius rule, and are therefore included in this analysis.

As mentioned above, this size effect - relatively higher cost increases being reported by relatively larger employers - could reflect the likelihood that larger worksites have more leave-takers, and tend to have formal policies that may require greater time and effort to bring into line with the Act's requirements. Nell Rivers, a human resources manager from Bell Atlantic, for instance, testified that in addition to direct costs, the company has "lost substantial productivity due to the need to train more than 6000 supervisors" on FMLA and on additional "new paperwork burdens."[14] Inset 6-2 contains one employer's testimony at the public hearings on his experience with costs related to the FMLA.

D. Benefits to Employers

Very few worksites report any significant cost savings (see Appendix E, Table 6.D). Once accounting for sampling error, only two of the size categories report savings that are significantly different from zero (five to 99 employees and 251 to 500 employees). Of the cost savings that do exist, there is a slight tendency for the larger worksites (i.e., 251 to 500 employees) to report more cost savings than the smaller worksites (i.e., fewer than 250 employees). Indeed, over ten percent of sites in the 251 to 500 employee size category experience cost savings as a result of complying with the FMLA (compared with five percent or less of worksites with fewer than 250 employees). To some extent, these savings may offset some of the relatively higher level of costs reported by larger sites, as described above.

One benefit noted by several testifying employer representatives is the savings resulting from reduced employee turnover costs. Ms. Rapaport from First Chicago Bank, for instance, emphasized that the cost of offering leave is outweighed by the cost of losing employees who have no access to leave: "... [W]e look at the fact that to recruit, to source, to hire, to go through the administration, training someone, bringing them up to speed would probably cost 50 to 150 percent of annual salary. In this way, we have someone who is coming back who is recommitted who knows the job, and that is very valuable for us in a business sense."[15] Terri Wolfe, Human Resources Director at Patagonia, a large clothing manufacturing and sales organication, noting the high replacement cost of even entry-level employees ($15,840) - to say nothing of senior executives ($89,599) - stated: "If the ethical obligation we all have as employers isn't reason enough to support these types of leaves, the financial impact certainly is. The choice to implement family and medical leave policies is a matter of priorities."[16]

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[14] Testimony of Nell Rivers, Human Resources Manger, Bell Atlantic, at Washington DC Hearing, August 4, 1995. U.S. Commission on Leave Public Hearing Transcript, p. 92

[15] Rapaport, p. 26.

Some employers have found that the Act has helped them to establish uniformity and consistency in their family and medical leave policies. Thus, Ms. Pinkert, a Bank of America vice president, testified that even though the organization already provided more benefits than those required under FMLA, the Act provided "a backbone to go on ... everybody is doing the same thing." In this case, the FMLA helped establish specifically "what the procedures would be ... and I think that's positive."[17] Further testimony from Ms. Morris, a human resources manager at ARCO noted "no downside" to providing FMLA benefits, and found it, in fact, "easier when [the] government passes a law" such as the FMLA.[18] Ronald Compton, CEO of AEtna Life and Casualty Company, testified likewise in support of the FMLA, noting that the "intent and spirit" have from the beginning been "on the mark."[19]

Several employers testified that the Act provides benefits not only to companies, but to their employees as well. Mary Ann Thode, President and CEO of St. Mary's Medical Center (owned and operated by Catholic Healthcare West), noted for instance, that the FMLA did not represent a "significant financial burden [or a] significant administrative headache," rather serving to "support [our] efforts to bolster the health of the family, and therefore the community that we serve." She described the Act as "cost-effective for us in reducing the emotional stress that employees feel when someone they care about needs their care."[20]

Marsha Brock, the human resources manager at Casto Travel, noted that as a result of the Act the company has "expanded this benefit to all of our employees regardless of their office size or location [and] ... we have also waived the one-year eligibility for the leave. We felt that a mom who has been with our company for ten months should have the same right and the same experience with her children as somebody who has been with the company, say, 15 or 20 years ... The FMLA is, we believe, in the best interest of the employee and the employer. We feel it is a dual benefit, and it will promote a productive environment and a strong dedication and loyalty."[21] Rhoma Young, Principal of Rhoma Young and Associates, a small management consulting company, described the Act as a useful tool to address performance problems that result from "stress from the outside world or from [their] personal life" affecting behavior. With the Act in place, managers are able to say to employees: "If you need to go out on leave to take care of these issues, we encourage you to do so."[22]

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[16] Testimony of Terri Wolfe, Human Resources Manger, Patagonia, at Washington DC Hearing, August 4, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 29

[17] Pinkert, pp. 52-3

[18] Morris, pp. 68,96,102.

[19] Testimony of Ronald Compton, Chairman and Chief Executive Officer, AEtna Life and Casualty Company, at Washington DC Hearing, August 4, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 19

[20] Testimony of Mary Ann Thode, President and CEO, St. Mary's Medical Center, at San Francisco, CA Hearing, June 26, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 10

Inset 6-3:

Bette Carlson, Director of Human Resources, National Futures Association

I really feel confident that I speak for all levels of management at NFA as well as our officers and directors when I say that NFA's experience with this leave has been very positive. As you will hear from our four staff who are here today, this policy benefits employees, because it allows them a peace of mind without any sense of guilt about shirking their job responsibility at a time when their energies need to be directed toward their families or personal lives. Management benefits by retaining its trained and experienced staff and from the loyalty and goodwill that the policy engenders among the employees. In my opinion, the United States of America and all society benefits also by ensuring positive family experiences.

Beyond providing natural caring and support, families represent the locus of deepest human experience. Connection to the past and hope for the future all arise from this nexus. I think that the Family [and] Medical Leave Act is a significant step towards bringing the United States employment policy into alignment with these positive family experiences.

Testimony of Elizabeth Carlson at Chicago, IL Hearing, May 8, 1995, U.S. Commission on Leave Public Hearing.

Among worksites already providing leave policies consistent with or more generous than those required by the Act, the FMLA may prove beneficial for the additional reason that these worksites are no longer at a competitive disadvantage in relation to other worksites. That is, to the extent that the Act entails costs, those are now shared by competing worksites that are also providing leave benefits because they are covered under the law. For example, Ms. Wolfe from Patagonia testified that "the enactment [of the FMLA] has actually leveled the playing field for us...[and] especially in states outside of California [it has] been very beneficial..."[23]

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[21] Testimony of Marsha Brock, Human Resources Manager, Casto Travel, at San Francisco, CA Hearing, June 26, 1995, U.S. Commission on Leave Public Hearing Transcript, pp. 17-8.

[22] Testimony of Rhoma Young, Rhoma Young and Associates, at San Francisco, CA Hearing, June 26, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 75.

[23] Wolfe, pp. 82-3.

In short, many employers view the FMLA as providing benefits to both the employer and the employee (see Inset 6-3). However, some employers have a different assessment of the overall balance of costs and benefits (see Inset 6-4).

Inset 6-4

Catherine A. Morris, Benefits Manager, ARCO

[ARCO] is in 100 percent agreement with the concept of providing time off for family and medical reasons. In fact, we have had, for many decades, benefits that are far in excess of what's required by FMLA. ... Our concerns are related to the ongoing paperwork requirements the Act has generated. Our employees, in essence, received no additional benefits as a result of the Act. But the company became responsible for a lot of extra paperwork.

The absences always occurred prior to the Act. There will always be issues where people have to be off work. But the regulations require letter-writing confirming coverage for people, which they're really on full pay for, most of the time. All their benefits are covered, so it's really superfluous information that we have to provide to employees - their rights and obligations under the Act. And that's the part that's burdensome ... is to make sure that every unit everywhere in the country understands exactly what the Act requires, and is able then to do what's legally required.

Testimony of Catherine A. Morris at San Francisco, CA Hearing, June 26, 1995, U.S. Commission on Leave Public Hearing.

E. Business and Employee Performance

The pattern of responses with respect to the Act's impact on business and employee performance at covered worksites is consistent with the findings above, in that a large majority of employers reported no noticeable effects in any one category.

Three dimensions of business performance were measured: productivity, profitability and growth.[24] The majority of covered worksites cite no noticeable effect on these dimensions (86.4 percent, 92.5 percent and 95.8 percent, respectively) (see Figure 6.4). To the extent that employers do report an effect, they are about equally likely to note a positive effect as a negative effect on business productivity and growth (6.4 percent compared with 7.3 percent, and three percent compared with 1.1 percent, respectively). More employers cite a negative effect regarding profitability (6.3 percent compared with 1.2 percent).

On all dimensions of employee performance, the majority of covered worksites report no noticeable effect (89.5 percent report no noticeable effect regarding em-

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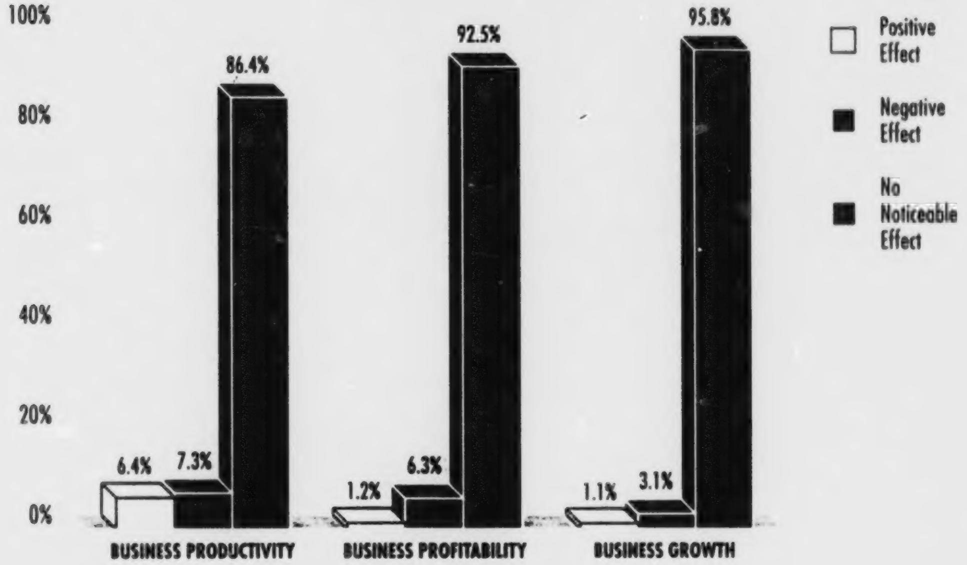
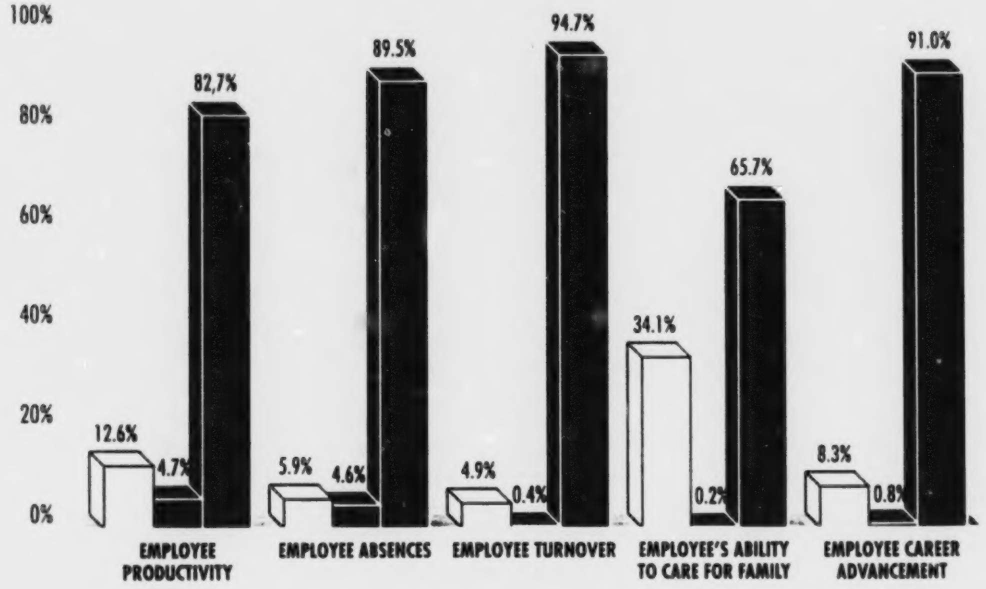
[24] One difficulty the Commission faced was the problem of measuring something as complex as productivity. A refinement of tools to measure productivity would help assess the impact of the FMLA and of family and medical leave policies on business performance in the future. The Commission on Leave recommends future research in this important area (see Chapter IX of this Report).

FIGURE 6.4

Business and Employee Performance: Effects of FMLA on Covered Worksites



BUSINESS PERFORMANCE



EMPLOYEE PERFORMANCE

SOURCE: AGUIRRE INTERNATIONAL TABULATIONS OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

Note: Percentages do not sum to 100% because a small percentage of employers did not know or did not respond.

ployee absences, 94.7 percent with respect to employee turnover and 91.0 percent on the career advancement of employees). To the extent that employers do report an effect, the positives outweigh the negatives on four measures and are roughly equally divided on the fifth - employee absences. The following hearing testimony from Martha Lawrence, Vice President of Public and Operator Services, Bell Atlantic, Silver Spring, points out one employer's concerns about employee absences: "We support the goals of the FMLA but have experienced unintended adverse consequences as a result of the implementation, including substantial costs for absences for non-serious health conditions, as well as administrative cost burdens. Employers who don't pay employees when they are off due to illnesses or employers that pay for only a handful of sick days each year, probably are not experiencing the sudden and dramatic increase in absence rates that Bell Atlantic has suffered."[25] However, Morton Bahr, President of the Communication Workers Union, which represents 37,000 Bell Atlantic members, disputes Bell Atlantic's assessment of the effects of the FMLA on absenteeism. He submitted testimony to the Commission stating that before the FMLA, AT&T and the Bell Companies "subjected employees who were absent from work - even with legitimate sick or disability leave - to discipline if absences exceeded a set number...Today, our members with a serious health condition can take sick leave without fear of discipline." Mr. Bahr points out that "most of the union's major telecommunications employers have found that the FMLA is not unduly burdensome."[26]

Significant positive effects of the FMLA are evident in the areas of effect on employees' career advancement (8.3 percent compared with less than one percent noting a negative effect) and employee productivity (12.6 percent compared with 4.7 percent).

Perhaps most significant in the light of the Act's goals, is the fact that over one-third (34.1 percent) of employers surveyed note a positive effect on employees' ability to care for family members, compared with 0.2 percent negative effect. As to the positive effect, Linda Seibert Rapaport from First Chicago Bank stated: "We know that just from everyday experience that when our employees are just able to take time away to care for their family members or for their own serious illness, when they return or just knowing that this leave is available, we know that they are more productive when they return, they are more willing to go the extra mile for our customers, and they become recommitted over and over again, emotionally committed to our organization and to performing service for our customers. And they also willingly offer their discretionary effort and suggest quality improvements. So we really see here that what is fundamentally good for our employees is fundamentally good for us as well. It is a real win-win."[27]

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[25] Testimony of Martha Lawrence, Bell Atlantic, at Washington DC Hearing, August 4, 1996, U.S Commission on Leave Public Hearing Transcript, p. 96

[26] Testimony of Morton Bahr, Communication Workers of America, at Washington DC Hearing, August 4, 1995, Commission on Leave Public Hearing Transcript, appended to formal written transcript.

As to sectoral differences, manufacturing sites are more likely to perceive negative effects on employee productivity (see Appendix E, Table 6.E).[28] Employers in the service sector are more likely than those in other industries to note positive effects on employee turnover. In short, the sectoral distinctions suggest that covered sites in the service sector are having the most positive experiences with the Act on selected dimensions of business and employee performance, while manufacturing sites appear to be least likely to have positive experiences.[29]

Size differences recall the pattern discussed above (see Appendix E, Table 6.F), with smaller covered employers, in general, more likely than larger ones to report no noticeable effect on the various aspects of business and employee performance measured. Regarding the three measures of business performance, between 96 percent and 100 percent of employers with 25 employees or fewer report no noticeable effects. By contrast, 26.2 percent of covered worksites with 26 to 49 employees report negative effects on productivity, and 20.9 percent report negative effects on profitability. Interestingly, however, the percentage reporting negative effects on business performance is noticeably lower for all larger employers except those with 1,000 employees or more. In this largest category, negative effects are noted by 27.6 percent regarding productivity and by 21.5 percent with respect to profitability. The percentage of employers citing negative effects on growth is extremely small by comparison, for all size categories.

As for the measures of employee performance, the results are somewhat more mixed. By far the most striking finding is that employers in all size categories are likely to note positive effects on employees' ability to care for family members, and this proportion grows from 11.5 percent for the smallest covered employer, to 34 percent of those employing between 11 and 25 employees and to over 70 percent for employers with 1,000 employees or more.

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[27] Rapaport, p. 24.

[28] Cantor, et al.

[29] There appears to be some confounding of the variables of size and sector in the experience of manufacturing sites, many of which are large and have relatively large numbers of leave-takers.

Negative effects are most likely to be reported by larger employers, and are most likely to attach to measures of employee productivity and absences. For instance, over a quarter of employers with 501 to 999 workers note negative effects on employee productivity (although this percentage was much lower - 4.7 percent - for all employers combined). More than one-third of employers with 1,000 employees or more note negative effects on absences (compared with 4.6 percent for all size categories).

In short, most employers do not experience any noticeable effects on business or employee performance. The most striking positive effect is in the area of helping families handle work and family responsibilities - the major goal of leave policies in general and the intent of Congress in enacting the FMLA in particular.

F. Comparisons of Covered Worksites' Experiences

Most covered employers report that the FMLA has had little measurable effect on the areas described in the previous section. Positive effects in the areas of employee performance, especially on employees' ability to care for their families, outweigh negative effects. Nevertheless, some employers, and in the case of the effects of intermittent leave, a significant minority, report costs and negative effects associated with the Act. In this section, we consider two possible reasons for these experiences.

First, we consider whether more difficulties and costs are experienced by covered worksites that need to initiate or change family and medical leave policies in order to comply with the Act (which we refer to as "complying employers") than are experienced by worksites that already have family and medical leave policies in place that are equivalent to or more extensive than those required by the FMLA ("voluntary employers"). This comparison is based on the hypothesis that the impact of the Act is more burdensome for worksites that need to start or adjust policies and procedures in order to comply.

Second, we analyze the effect of direct experience with leave-taking on employers' assessment of the FMLA. We compare differences in the perceived impact of the FMLA between worksites that had one employee or more take leave for a reason covered by the Act, and worksites that had no leave-takers during the period of time covered by the Employer Survey.

In making these two comparisons, we again refer to covered employers' answers to three key questions: ease of compliance with the Act; costs associated with the Act; and the effect of the Act on business and employee performance.

1. Differences Between "Voluntary" and "Complying" Employers

There are several notable differences between employers that had voluntarily implemented leave policies meeting or exceeding the criteria of the FMLA (one-third of covered worksites), and the employers that needed to change policies in order to comply (two-thirds of covered worksites). There are several differences between the "voluntary" and "complying" employers relative to ease of compliance (see Appendix E, Table G). For example, in terms of coordinating the Act with other federal laws, one-third (33.8 percent) of "compliers" reported difficulties compared with only 10.3 percent of "voluntary" employers. In terms of maintaining additional records, 27.7 percent of "compliers" report this administrative task is "very" or "somewhat difficult," compared with 16.7 percent of "voluntaries". The largest area of difference relates to managing intermittent leave. Forty-seven percent of "complying" employers compared with 23.3 percent of "voluntary" employers find this "somewhat" or "very difficult."

Interestingly, there are no noticeable differences between the two groups of employers on any of the cost dimensions measured. That is, the extent of cost increases reported is similar across the two groups for administrative costs, benefits costs and costs associated with having to hire and train workers as a result of the Act.

There are no significant differences between "voluntary" and "complying" worksites as to their assessment of the effect of the FMLA on business growth, profitability and business productivity. However, differences between "voluntary" and "complying" employers are numerous in the areas of employee performance. First, with regard to employee productivity, 24.8 percent of "voluntary" employers (compared with 6.4 percent of "complying" employers) see positive effects. Over 40 percent (42.9 percent) of "voluntary" employers report positive effects on employees' ability to care for family members, compared with 29.9 percent of "complying" employers. As to employees' career advancement, 22.3 percent of "voluntary" employers note a positive effect, compared with 1.7 percent of "complying" employers. "Complying" employers are relatively less likely than "voluntary" employers to note positive effects on employee career advancement, but less than two percent report any negative effects in these areas (see Appendix E, Table 6.H).

In sum, the experiences of "voluntary" employers with the Act appear to be somewhat more positive than those of "complying" employers. Specifically, the "voluntary" employers are less likely to have trouble coordinating the Act with other federal laws, maintaining additional records, or managing intermittent leave. They are more likely to report positive effects on various measures of employee performance, such as employee productivity. Interestingly, there appear to be no significant differences between "voluntary" and "complying" employers with respect to cost increases associated with the FMLA and effects on business performance.

2. The Effects of Having Leave-Takers

Overall, the differences between the experiences of worksites with one employee or more taking leave under the Act and those without any leave-taking employees are relatively small. However, the experience of having leave-taking employees does seem to amplify employers' assessments of the Act - on both the positive and negative sides. It appears that the experience of having a leave-taker shapes the opinions of managers administering leave, such that they have stronger views of the impact of leave-taking in general, whether positive or negative. It should be noted that when covered employers who had no leave-takers report costs - especially administrative costs - these costs may have been incurred in anticipation of having employees take leave. On the other hand, their reports on effects and ease of compliance probably reflect their attitudes and expectations as they have not yet had direct experience with employees taking leave.

Keeping in mind that the majority of covered worksites found it "easy" ("very" or "somewhat") to administer the Act, there are some differences between employers with leave-takers and those who did not have leave-takers on some dimensions of administration (see Appendix E, Table 6.I). For example, almost three times as many employers with leave-takers find record-keeping "somewhat difficult" than do those without leave-takers (29.6 percent compared with 11.3 percent). Twenty-seven percent of those with leave-takers find coordination of the FMLA with other federal laws to be "somewhat difficult," compared with 16 percent of those without leave-takers.

Intermittent leave - considered more difficult to administer than other aspects of the FMLA by a significant minority of employers - is viewed as more difficult ("somewhat" or "very") to administer by employers with leave-takers than by those without (48.5 percent compared with 30.5 percent). It is not surprising that worksites with leave-takers are engaged in more record-keeping and administrative activities as a direct result; likewise, these organizations are likely to have had to identify relevant laws and adjust policies accordingly.

Regarding costs associated with the FMLA, employers with leave-takers are more likely to report costs in all three areas measured (see Appendix E, Table 6.J). The majority of covered employers experience no costs or small costs. However, moderate and large costs are more likely to be reported by those with leave-takers and in the area of administrative costs.

The effect of the FMLA on business and employee performance reveals some noteworthy contrasts between covered employers with leave-takers and those without (see Appendix E, Table 6.K). In the areas of employee productivity, absences and turnover, employers with leave-takers are significantly more likely to report positive effects than those without leave-takers (with 21.1 percent, 14.1 percent and 13.9 percent of employers with leave-takers reporting positive effects in each area, respectively, compared with 9.2 percent, 2.3 percent and 0.7 percent of employers without leave-takers.) In general, then, having direct experience with leave-taking employees is associated with a positive assessment of the effect of the FMLA on employee performance.

G. Small Worksites' Experiences and Expectations

So far, this chapter has focused on the experiences of worksites covered by the FMLA, and those of various subgroups of covered sites. This section considers in greater detail the experiences of smaller employers, including discussion of a Census Bureau survey of small employers carried out for the Commission on Leave, and compares the views and experiences of employers covered by the Act - including the small covered employers - with the expectations of those not covered by the Act.

1. Coverage and Leave Policies of Smaller Employers

The majority of worksites surveyed in the Employer Survey are not covered by the Act because the law established coverage on the basis of worksite size. Of the worksites surveyed in the Employer Survey, about 11 percent are covered, and the remaining 89 percent are not covered. However, because of the 75-mile radius provision, a substantial number of worksites with fewer than 50 employees (60.9 percent) are covered by the FMLA.

Holding size constant, covered sites are more likely to have had family and medical leave policies in place before 1993 when the Act was passed (38.7 percent compared with 17.4 percent), and, not surprisingly, far more likely to have put policies in place during and after 1993 (presumably as a result of the Acts passage).[30] One reason why a sizable percentage of the smaller covered sites had policies in place before they were legally required to offer family and medical leave by the FMLA may be that these worksites are units of larger worksites, which have historically been more likely to have family and medical leave policies in place to begin with.

The attachment of many small covered sites to larger worksites probably also accounts for the fact that the percentage differences for each category of leave policies are relatively small between sites with fewer than 50 employees and those with 50 workers or more. For both covered and non-covered sites, as size increases so does the likelihood of having had policies in place before 1993, and of putting policies in place during or after 1993.

2. The Census Bureau's Survey of Small Businesses

The data discussed above show that the costs to smaller covered employers seem to be lower than those to larger ones, and the negative effects they experience more limited. A survey of small businesses with at least one employee, conducted by the Census Bureau for the Commission on Leave, provides further information about the experiences of small employers.[31]

This survey queried employers with regard to their leave policies in 1992, before the Act, and in 1994, after the passage of the FMLA. It represents three million small businesses, of which 3.5 percent had 50 employees or more on the payroll for

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[30] See discussion in Chapter IV and Appendix E, Table 4.C.

[31] See Chapter II for full description of the CBO Survey conducted by the Census Bureau.

20 calendar work weeks or more in 1994 - a proxy for being covered by the FMLA. Taking this employer population as a whole, about 50 percent reported that between three-quarters and all of their employees met the FMLA requirement for eligibility of having worked at the company for at least 1,250 hours in 1994. Among employers with 50 employees or more, almost 100 percent had at least one eligible employee. It should be noted that these criteria differ somewhat from those used for the Employer Survey (as described in Chapter IV), hence this population of small worksites differs somewhat from the small worksites discussed earlier in this chapter.

a) Incidence and Characteristics of Leave-Taking

About twice as many employers with 50 employees or more than employers with fewer than 50 employees reported having had at least one leave-taker in 1994; however, there was no statistically significant increase in leave-taking among the smaller or larger employers between 1992 and 1994. That is, the FMLA does not appear to have increased the incidence of leave-taking among these small employers, whether or not they were covered. In both 1992 and 1994, about 79 percent of all employers surveyed reported having no leave-takers (among employers with 50 employees or more, this figure was 55.5 percent).

There was a statistically significant increase between 1992 and 1994 in the use of family and medical leave by men - from 1.2 percent of leave-takers in sites with 50 employees or more in 1992, to four percent in 1994.

Among covered employers, 72.4 percent reported that the average leave lasted between two and 12 weeks; 12.7 percent reported that the average leave lasted a week or less. (These figures are generally in line with the results of the Employer Survey.) The length of leave in these small worksites did not change significantly between 1992 and 1994.

b) Extent of Leave-Related Costs

Among the covered employers (with 50 employees or more), 73.7 percent reported no new costs associated with the Act, while 24.2 percent reported some additional costs related to the FMLA. (Results are similar to those of the Employer Survey.) Most of those reporting some cost increases - 17.6 percent of the total sample - reported cost increases of less than one percent of payroll; another 4.2 percent reported increases of between one and four percent of payroll.

c) Extent and Effect of Policy Changes to Comply with the Act

Among covered worksites (with 50 employees or more), about two-thirds did not have to make policy changes in order to comply with the Act. Of those employers making changes in order to comply with the FMLA, about 30 percent made policy changes to allow fathers to take leave to care for a newborn child, about 24 percent made changes allowing employees to take family leave (to care for a seriously ill child, spouse or parent) and about 20 percent made changes allowing for maternity-related disability leave and leave for one's own serious health condition.

Among the roughly one-third of employers making policy changes in order to comply with the Act, a small minority reported reduced employee productivity (7.7 percent), increases in unscheduled employee absences (5.6 percent) and increases in employee turnover (4.2 percent). By the same token, seven percent reported improvements in employee morale and 16.8 percent noted an increase in employees' ability to handle family needs.

3. Covered Employers' Experiences Versus Non-Covered Employers' Expectations

Small employers have voiced concerns about what would happen to their businesses if the FMLA were applied to them. For example, Jim Johnson, the owner of a small Washington D.C. photography shop with only one employee, testified that if his shop were covered, "[it] would make it difficult for me to continue in business," noting that most small employers "are barely scraping by."[32] Similar concerns were voiced by the owner of another small business, Furin's, with 11 employees, "If the Family and Medical Leave Act applied to my company, it would cause a tremendous burden ... Losing just one of my employees for [12 weeks] would be devastating, especially if that employee is essential to the operation of my business....As a small business owner, I want to work out flexible arrangements with my employees when they need to take time off for sick child, spouse, or their own sickness, but I also need to stay in business to make sure I can offer people jobs. If this one mandate would include me, my days of owning my business - would, and very soon, disappear."[33] The pressures on small business were brought to the attention of the Commission by other employers during the public hearings process (see Inset 6-5).

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[32] Testimony of Jim Johnson, Jim Johnson Photography, at Washington DC Hearing, August 4, 1995. Transcript of Commission on Leave Hearings, p. 175.

[33] Testimony of Bernard P. Furin, at Washington DC Hearing, August 4, 1995. U.S. Commission on Leave Public Hearing Transcript, pp. 101, 103-4.

Before the passage of the Act, there was significant debate as to the possibility that the FMLA would be unduly burdensome to smaller employers. Comparisons between covered and non-covered worksites reveal striking differences between how the FMLA is perceived by those who have and have not had direct experience with the Act. As shown in Figure 6.5, the costs anticipated by non-covered worksites are significantly higher than those experienced and reported by covered worksites. Moderate or large increases in administrative costs are anticipated by 42.4 percent of non-covered sites, but experienced by only 10.8 percent of covered employers. Regarding hiring and training, moderate or large cost increases are expected by 36 percent of non-covered sites, but cited by only 5.2 percent of covered sites. That is, non-covered employers were between approximately four times and seven times more likely to expect moderate or large cost increases than covered employers were to experience them (see Appendix E, Table 6.L).[34]

Inset 6-5

Sharon Beard, owner, Hurricane Fence Company,

Like many small businesses, you know, we're operating on small margins in order to compete with some of these bigger businesses" but "we're being pressured to provide benefits to our employees which we are incapable of providing for ourselves and our families.... For many small businesses, the cost of "carrying and maintaining health coverage" and "bring[ing] on a replacement worker and to cover them and their family would be a real hardship....I have given family paid leave for one of our guys. He had requested a leave. I gave him two weeks off paid. This was a worker who showed up every day, never complained, you know, gave the job his all. And you do that, you work with your employees. You value your employees. We're not ogres. We're not monsters. I think some people like to look at the business community and say, 'Oh, but, you know, you ought to do this for your workers.' We can't do it for ourselves, and I think that's what it gets down to.

Testimony of Sharon Beard at Chicago IL Hearing, May 8, 1995, U.S Commission on Leave.

The contrast between the actual experiences of covered sites and the expectations of non-covered sites with respect to business and employee performance is also striking, as shown in Figure 6.6. Non-covered sites are far more likely to anticipate a negative effect on every dimension of performance than was experienced by covered worksites. About 47 percent of non-covered employers anticipated a negative effect on business productivity and profitability (compared with 7.3 percent and 6.3 percent reported by covered sites), and close to one-third expected a negative effect on growth, employee productivity and employee absences (compared

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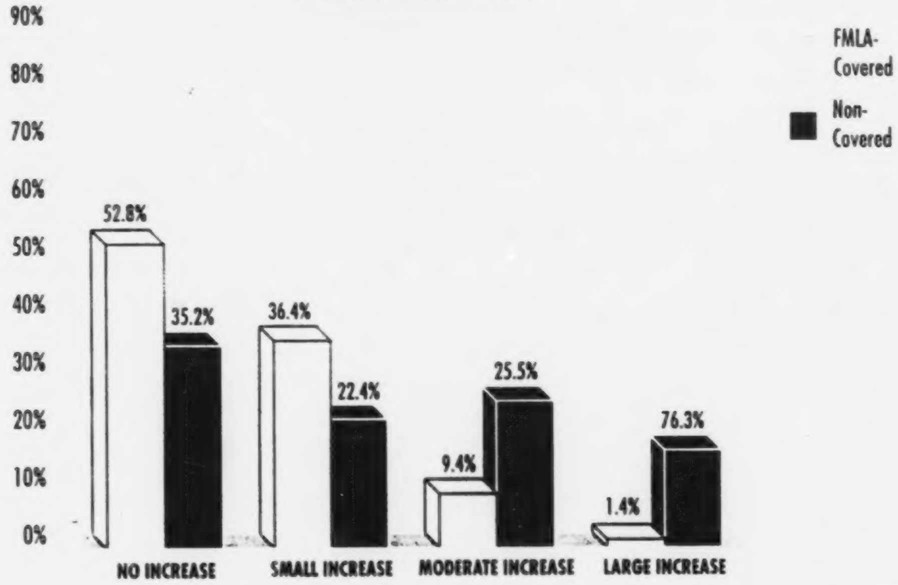
[34] Notwithstanding the non-covered sites overall negative expectations, 4.2 percent of non-covered sites anticipate that compliance with the Act would result in some cost savings.

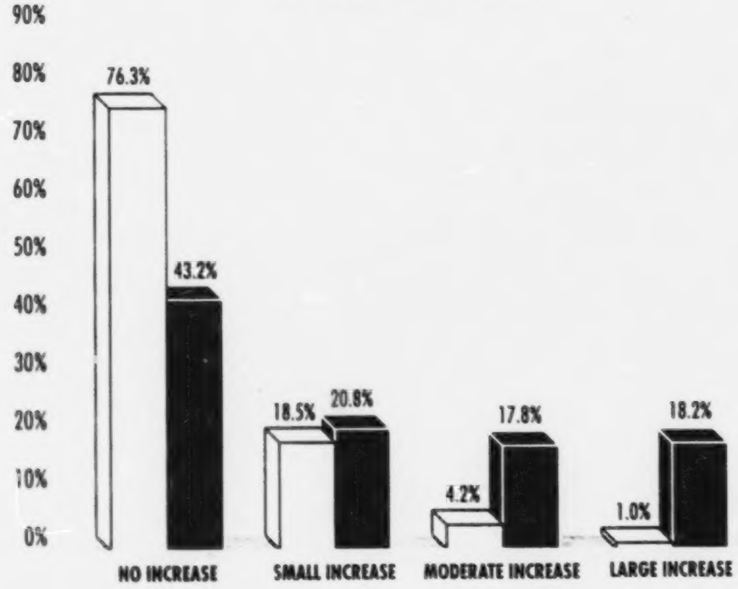
FIGURE 6.5

Comparison of Costs Experienced by FMLA-Covered Worksites with Costs Anticipated by Non-Covered Worksites

ADMINISTRATIVE COSTS



HIRING/TRAINING COSTS

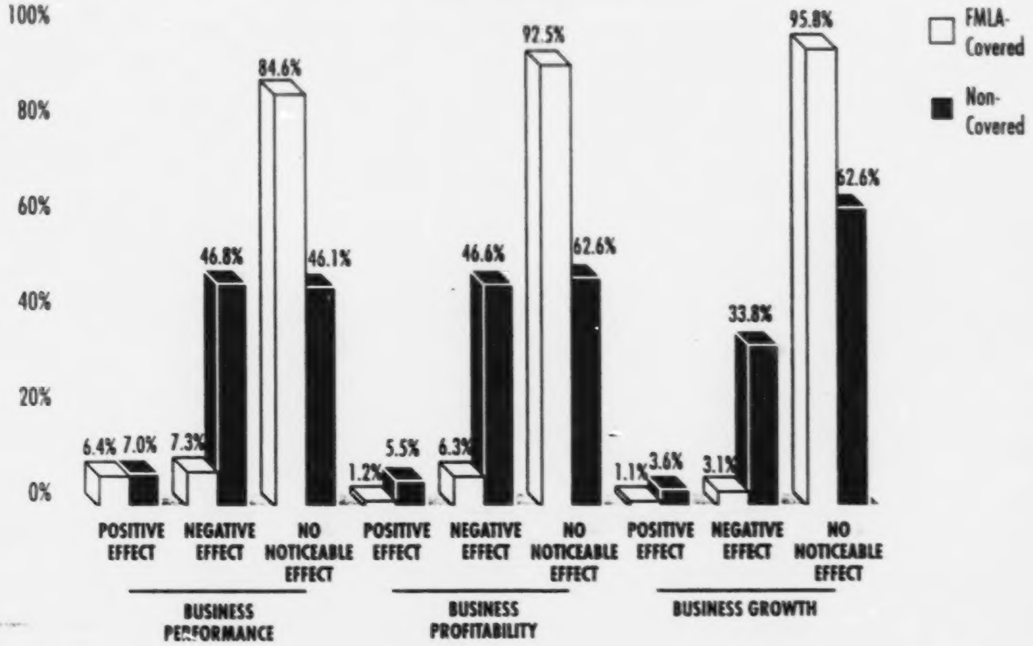


SOURCE: WESTAT, INC. TABULTION OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

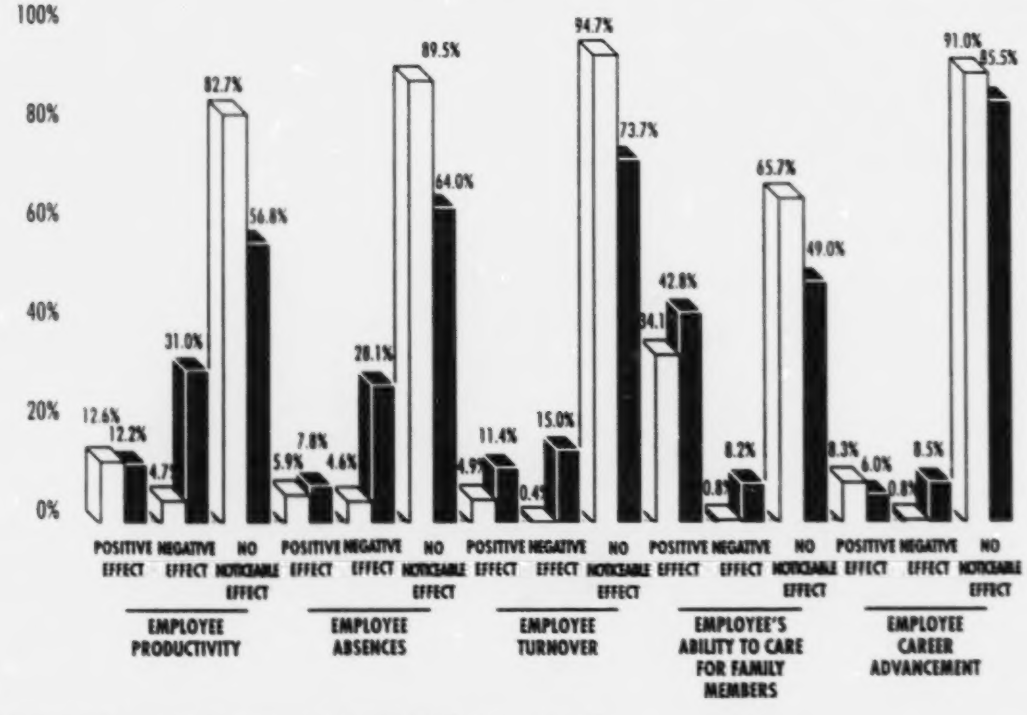
FIGURE 6.6

Comparison of Effects of FMLA on Covered Worksites with Anticipated Effects of FMLA on Non-Covered Worksites

BUSINESS PERFORMANCE



EMPLOYEE PERFORMANCE



SOURCE: WESTAT, INC. TABULATION ON DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

with 3.1 percent, 4.7 percent and 4.6 percent respectively, reported by covered sites). Between 8.2 and 15 percent of non-covered sites (compared with less than one percent of covered employers) expected negative effects on employees' ability to care for family members, career advancement and turnover, although it should be noted that 43 percent of non-covered sites expected a positive effect on employees' ability to care for family members (see Appendix E, Table 6.M).

Put differently, the negative effects expected by non-covered employers are much greater than the negative effects experienced by covered employers. The concerns regarding possible negative effects on employee turnover are especially noteworthy: non-covered employers are more likely to anticipate negative effects in this area than covered employers are to experience and report negative effects on turnover (15 percent compared with 0.4 percent).

These expectations are also at odds with the fact that smaller covered employers tend to find the Act less burdensome than larger covered employers. These results may reflect the expectation of small employers that they lack the labor pool, administrative capacity and financial resources to absorb the impact of a family and medical leave requirement. The smaller the worksite, the greater the impact of any one employee's taking leave. On the other hand, small employers are more likely to know a leave-taking employee personally and to be able to assess the positive impact on the employee and the workplace. In short, given that smaller covered worksites are less likely than larger ones to find the FMLA costly and burdensome, the expectations of small non-covered worksites are discrepant with the experiences of worksites covered by the Act.

H. Summary

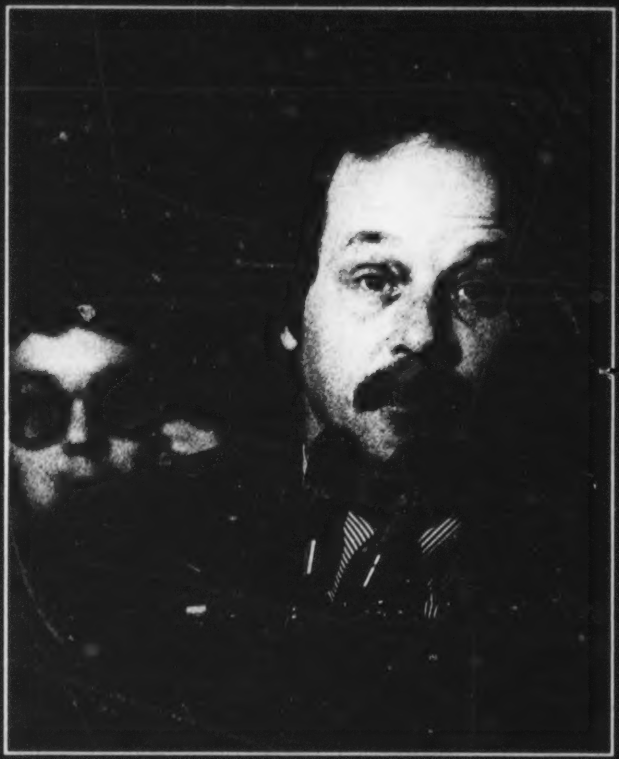
In conclusion, on the whole, the costs of the Act to employers appear to be modest or small. Most covered employers report having a relatively easy time complying with the Act. A small group of employers reports cost savings as a result of the Act, and some of the testimony heard at the public hearings suggests potential benefits to worksites to offering leave, particularly in the area of reducing employee turnover.

Larger worksites, and to a lesser extent manufacturing sites, appear to experience somewhat more difficulty with all aspects of administration and compliance than worksites in smaller size categories and in other sectors. While the data collected in the Employer Survey do not allow for clear inferences as to what accounts for these differences, they are probably due in part to start-up costs involved in the implementation of the FMLA. These may diminish over time, and further research will be needed to determine the extent to which the administrative costs and burdens of compliance decline as these start-up costs are recouped and offset by benefits in other areas. While generally the costs and negative effects of FMLA seem to increase with the size of the worksite, this is not a constant or linear relationship.

The Employer Survey reveals some differences in the ease of administering the Act and the impact on business and employee performance, between "voluntary" employers (worksites that had leave policies pre-1993 comparable to the FMLA) and "complying" employers (worksites that had to initiate or change their leave policies after the enactment of the FMLA), although there are no significant differences in the area of cost between the two groups. Differences between worksites that had at least one leave-taker and those that did not have any leave-takers suggest that direct experience with leave-taking amplifies employers' assessment of both the positive and negative effects of the Act, although these differences are small overall. Perhaps the most significant difference is that employers with leave-takers note enhanced productivity among their employees.

Also noteworthy is the contrast between the experiences of the small covered worksites and the expectations of the small non-covered sites. As noted above, larger covered sites are more likely to report compliance difficulties and costs than the small covered sites. The small covered employers, both those surveyed by the Census Bureau and the Employer Survey, appear to have had relatively benign experiences with the Act; they have experienced small costs and minimal changes in leave-usage since 1992. By contrast, the expectations of the small non-covered sites included in the Employer Survey are far more negative than the experiences of all covered sites, but especially so in comparison with the small covered sites.

As with any regulation that may entail costs to employers, one way to ensure that those costs do not place affected employers at a competitive disadvantage relative to non-covered worksites is to make coverage as broad as possible. With respect to the FMLA, to the extent that covered employers experience costs (for instance, the costs of replacing workers on leave) that are not experienced by non-covered worksites, the former may be placed at a competitive disadvantage. By the same token, to the degree that the FMLA has the effect of lowering costs to covered worksites - for instance, the cost savings associated with reduced employee turnover costs - non-covered sites may be placed at a competitive disadvantage. Further research after the Act has been in force for five years or more can help clarify the relative costs and benefits experienced by covered and non-covered worksites.



Assessing the Impact of Family and Medical Leave Policies on Employees

A. Introduction

This chapter [illegible] primarily [illegible] the Employee Survey [illegible] the question of how the Act [illegible] brief overview of leave-taking patterns [illegible] presented in Chapter [illegible] and supplemented by testimony of leave-takers [illegible] the Family Leave Commission. This is followed by [illegible] Employee Survey, which [illegible] leave, those wanting to take leave but not taking it [illegible] with the amount of leave they took. The next section of the chapter presents [illegible] experiences of four people who took leave under the Family and Medical Leave Act, illustrating with qualitative [illegible] some of the issues [illegible] by the quantitative data from the two national surveys on which this Report [illegible]. The chapter ends with a brief conclusion.

B. Overview of Leave-Takers and Leave-Taking

The Employee Survey demonstrates that the demand for the kinds of leave covered by the FMLA is substantial. Over 16 percent of employees surveyed took leave for reasons covered by the Act; another 3.4 percent state that they needed but did not take leave. In other words, about [illegible] percent of the employees surveyed in both covered and non-covered worksites either took or needed to take leave for personal medical or family caregiving reasons as covered by the Act.

The demographic profile of leave-takers generally resembles that of the overall sample of employees surveyed, with some important distinctions. [illegible]

Opposite:

seriously ill family members than are men. In terms of absolute numbers, the largest group of leave-takers is between 35 and 49 years old. However, relative to their representation in the employed population, employees in the 25 to 34 year-old age group are more likely than younger or older employees to take leave. This in part reflects the fact that a significant portion of leave-taking centers around caring for children from birth through adolescence, and those in their 20's, 30's and 40's, are most likely to have children who may need care.

As noted in Chapter V, leave under the FMLA falls into two major categories: 1) medical leave, including leave for ones' own serious health condition, excluding maternity-disabilities; 2) family leave, including a) mothers' or fathers' care of a newborn child, a newly-adopted, or foster child; and b) care for a seriously ill child, spouse or parent. In addition, maternity-disability leave may combine both medical leave and parental leave. About 60 percent of those who take leave do so because of their own serious health conditions. Inset 7-1 illustrates the story of Diane Atwood who took leave to deal with a serious medical problem and Inset 7-2 tells the story of Nedra Ward who took leave for a maternity-disability.

About one-fourth of all leave is taken by relatively young parents as parental leave or as leave to care for their seriously ill children. Jonathan Zingman, who took leave to care for his new daughter, illustrates a typical parental leave story (see Inset 7-3) and the story of the Weaver family movingly illustrates leave to care

Inset 7-1

Diane Atwood: Leave for One's Own Serious Health Condition

Diane Atwood, of Little Rock, Arkansas, is married and has two daughters - one a nurse and the other a pre-med student in college. She and her husband both work full-time. On December 23, 1992, Ms. Atwood was diagnosed with hodgkin's lymphoma, and had to endure many "necessary, but also very painful" tests and biopsies. The tests revealed cancer in her lymph nodes, neck, chest, abdomen, and pelvis. "Not", she noted, "a very good Christmas present for me and my family."

Using personal leave time, she began chemotherapy on January 14, 1993, the day after her 41st birthday, and her treatment involved several months of four-and-a-half hour chemotherapy sessions every other week. So far so good. But later that year the cancer began to grow again; she had come out of remission. Two months later she had to undergo five days of high-dose chemotherapy.

A little over a year later, in April of 1994, Ms. Atwood needed to use FMLA leave. She was hospitalized for a bone marrow and stem cell transplant, and needed to be away from work for about ten weeks. When she was diagnosed, she said, "my body became a war zone. To be able to fight back and win the war that was taking place inside of me, all my energies had to be focused on this war. The Family and Medical Leave Act of 1993 allowed me the freedom to concentrate solely on fighting the cancer with all my being. Because of this Act, I was free from having to worry whether I would still have a job when I was able to return to work. I was also freed from the worry of having to try and find the funds to keep my health insurance in force, with me paying the total monthly premium of well over $400. But, because of the Family and Medical Leave Act, my employer continued to pay their part of my group health insurance and I paid my part. This kept the insurance affordable for me and, most important, it kept the insurance in force until I was able to return to my job."

Testimony of Diane Atwood at Washington, DC Hearing, August 4, 1995, U.S. Commission on Leave Public Hearing.

for their seriously ill daughter Melissa (see Inset 7-4). Almost ten percent of leave is taken by employees who are typically somewhat older, in order to care for seriously ill elderly parents, as described by Patricia Connell who cared for her seriously ill mother (see Inset 7-5). Finally, care for an ill spouse accounts for about three percent of all leave taken, and is described by Walter Fish (see Inset 7-6).

The great majority of all leave taken falls within the 12-week limit established by the Act. Maternity-disability leave tends to be relatively longer; 40 to 45 percent of these leaves last more than 12 weeks (this type of leave often covers some time before birth as well as the post-partum recovery). Most leave to care for newborns is less than 12 weeks. Ninety percent of those who take leave to care for seriously ill children are off the job for less than two weeks, as are 80 percent of leave-takers caring for seriously ill parents. Salaried employees are especially likely to take shorter leave - up to seven days.

The most prevalent method used by employers to cover the work of employees who take leave is to assign their work temporarily to other employees - according to both surveys. A number of employers also cite the use of temporary replacements; employees in the lowest-income category are most likely to state that permanent replacements were hired to cover their work.

A large minority of non-leave-taking employees express concern about the burden of having to take over work of leave-taking employees. However, over two-thirds (71 percent) of non-leave-taking em-

Inset 7-2

Nedra Ward: Maternity-Disability Leave

Nedra Ward, an administrative assistant, found out in January of 1994 that she was pregnant. She testified as follows: "I didn't share it with anyone in my department yet because I started experiencing difficulties. I had severe nausea and frequent spotting. And so I decided to keep it to myself to try to get through my first trimester, and then I would share it with the company. Through this time, I exceeded my sick days as well as my vacation days. So in April of 1994, my manager called me into her office to inform me that I had exceeded all days and that disciplinary action would have to be taken against me. This is when I decided to inform her that I was pregnant. And she said, well, she would have to meet with [the Director of Human Resources] to see if something could be done since there was not an illness but a medical condition."

Ms. Ward's manager soon reported back that she "could take time on an intermittent basis since it was not definite as to when I would have difficulties in my pregnancy. So for the next six months of my pregnancy I was able to take time off of work whenever one of the occurrences would happen."

Her employer also moved her to a less pressured department. This "alleviated a lot of stress" and "I was able to come into my department, continue to work whenever possible until I had my child, which was in October of 1994. And he was born healthy and strong, and he'll be seven months old next week. And so I've really had a very positive experience. On the onset, I was not familiar with the intermittent schedule that I could take and neither was my department. We weren't familiar with that. So we both learned something. And I didn't meet with any opposition once we all understood the intermittent schedule."

Testimony of Nedra Ward at Chicago, IL Hearing, May 8, 1995, U.S. Commission on Leave Public Hearing.

ployees surveyed agree with the statement that all employees should have the ability to take up to 12 weeks of unpaid, job-protected leave per year for family caregiving needs and serious health conditions.

Most leave-takers had their benefits continue while they were on leave, but about nine percent did not. About three percent report that they lost their health benefits while they were on leave. Non-whites, employees with one or more children and lower-income employees are especially likely to report having lost benefits, as are women and employees between 25 and 34 years old. Salaried employees and employees with partial or full wage replacement are comparatively unlikely to lose benefits.

Two-thirds of leave-taking employees report that they receive full or partial wage replacement during their leave. Those taking leave for their own serious health condition are most likely to have had some wage replacement (probably in large measure pay for sick days). Salaried and unionized employees, employees with the highest levels of household income and education are most likely to receive wage replacement. The likelihood of an employee receiving full or partial wage replacement increases sharply as education and income rise. Men are more likely to receive full pay during leave than women, as are workers between 50 and 64 years old.

Inset 7-3

Jonathan Zingman: Parental Leave

Jonathan Zingman is a theoretical nuclear physicist. At the time of his second daughter's birth in 1994, he was employed at TCSI Corporation, managing a project developing integrated circuits for cellular phones, supervising a staff of four and acting as primary contact for the company's Japanese client. Information about the FMLA had been posted around the company, and the company had also circulated a memo providing detailed information and procedures for using the Act. Mr. Zingman and his wife decided that he should take leave to be with her upon their daughter's birth, particularly since they knew that his wife would be having a cesarean section.

Immediately after his daughter's birth, Zingman took sick leave and vacation time. Two weeks after her birth, his daughter was hospitalized for a staph infection, after which his wife's mother also came to help the couple care for their new baby and their older daughter. About six weeks after his daughter's birth, Zingman began FMLA leave, which lasted for a period of approximately two weeks. The time was spent "at home with my family and being a father mostly, helping my wife recover from her surgery, helping the baby recover from being in the hospital, and helping my daughter adjust to having competition in the house."

Zingman felt that the "leave was handled very well at my company. In spite of being mostly male and having the high pressure, they are very encouraging of this. They allow you to take responsibility for your own work, and if you feel you can take the time off and spend the time with your family, then there doesn't seem to be a problem with that."

He testified: "I don't have a dramatic story, but the leave was important because it allowed me to settle in, allowed my new daughter to settle in, allowed us to settle in as a family, and allowed my wife to recover from her surgery. The time that we spent was very much family time: doing the laundry and taking care of the kids, and that sort of thing, and it was time that I was able to spend just being the father, and not the father and the engineer and physicist, all the other roles."

Testimony of Jonathan Zingman at San Francisco, CA Hearing, June 26, 1995, U.S. Commission on Leave Public Hearing.

Inset 7-4

Kenneth Weaver: Leave to Care for a Seriously Ill Child

Melissa was the oldest child of Kenneth and Rosie Weaver. She was diagnosed with a rare type of cancer when she was ten years old, and underwent chemotherapy, surgery and radiation treatments for a full year. More lumps and tumors were found, biopsies, surgery, chemotherapy and radiation therapy were performed. By this time the tumor had spread to more vital areas: her lung, liver and spine.

Mr. Weaver described his daughter as "strong, tough, determined, intelligent, sympathetic, apologetic, kind, friendly, and every other adjective there is to describe a wonderful little girl." While waiting with her mother to see the doctor about a lump on her leg, he recalled, she "confidently said to her mother, 'well, at least I'm not sick.'" That remained her "personal motto" almost as long as she lived.

But the doctor said Melissa's death would be "quick, probably less than six months." She urged him to take time off "right now." Mr. Weaver, an instrument electrical technician at Oxichem, told his supervisors: "I'm going to use the Family [and] Medical Leave Act, and I'm out of here." But he was apprehensive, knowing that "the company wasn't used to hav[ing] something like this come thrown right in their face. So I was going to give them about a week to go ahead and get everything organized." Melissa then "decided to defy her fear of flying," and she and her family, including her parents, two siblings and grandmother, flew to Chicago to visit her cousin, aunt and uncle.

One evening Melissa and her father talked about "going to the supermarket, buying a couple steaks and just cooking our own supper at home." She had been in a wheelchair for several weeks, but on this night she got out of the car and walked in the store with her father. It was the last time he remembers her walking on her own.

In September of 1993 another bulging lump was found below Melissa's waist, accelerating a trip to Washington D.C. provided by the Make-A-Wish Foundation. In Washington, Melissa "was granted a very special wish. [President] Clinton met us in the hallway after completing his morning jog, and it was then that I was able to personally thank him for the FMLA. Without this law, my family could have never made those precious memories that we now hold so dear."

The Weavers returned home late that day. Melissa, very sick, did not live to see the next Sunday. "My wife and I were with Melissa for each and every moment until her final passing. For that chance I am eternally grateful," said Melissa's father. Rosie Weaver added: "For 18 months, Melissa and I had been traveling for over about three hours back and forth to Houston for either a week stay or one day. And at that point, it was just like, I ... couldn't handle it. And to have [her father] with us and to have that support, because you're always trying to take care of the other two children and trying to keep everything normal when it is not, and to have him there with me was - I don't know if I would have made it without having him there."

Testimony of Kenneth and Rosie Weaver at Chicago, IL Hearing, May 8, 1995, U.S. Commission on Leave Public Hearing

Inset 7-5

Patricia Connell: Leave to Care for a Seriously Ill Parent

Patricia Connell is a supervising attorney with the Legal Assistance Foundation of Chicago. She is married, and has children of her own. In 1993, she learned that her mother, living alone outside of Harrisburg Pennsylvania since 1960, was suffering from a form of cancer which is almost always fatal. The doctors informed Ms. Connell, an only child, that her mother probably had between three and nine months to live, and that although she probably would not regain enough strength to resume her independence or to drive her own car, she could probably remain in her own home until she died.

Ms. Connell's mother wanted very much to stay in her own home "free to prepare and eat her own meals, sit in her own yard and watch the seasons change and sleep in her own bed until death took her." Ms. Connell, determined to try to help her mother fulfill this wish, went to her employer armed with the FMLA. She requested periodic leave to enable her to travel back and forth to Pennsylvania once a month to help her mother get to chemotherapy sessions, and to stay with her during the following days of weakness. Connell knew that her employer would be personally sympathetic, but in the past, when she had requested unpaid time off from her job, it had been given reluctantly. There was concern that her leave might set a bad precedent. This time, however, "[w]hether it was the Act or my employer's recognition that we all have responsibilities to our parents, he was gracious and only required that I notify him of the times that I would be gone, giving him as much notice as I could."

Over the next five months, Ms. Connell made six trips to her mother's home, taking her for treatments, doing shopping and preparing advance meals. She arranged for periodic visits from home health aids and visiting nurses, did the spring cleaning, and made sure that bills were paid. Moreover, she and her mother were able to spend time together, going through cherished things which Ms. Connell's mother asked her to give to special old friends. They visited the grave of her mother's mother, and, when possible, went out.

Ms. Connell's mother then had to be hospitalized, and on her release, Ms. Connell decided to move her mother into her own house in Chicago. After the move, her mother lived for another two weeks. She died on a Friday morning shortly after her grandchildren children had left for school, as her daughter sat at her side, talking to her.

"[It is] always hard to lose a parent. Despite the fact that neither my mother nor I had the extreme financial difficulties so often associated with a fatal illness, it was taxing to balance the competing needs of my mother, my job, and my family. My spouse and children were extremely supportive, understanding that caring for my mother was a family responsibility that I felt I had to meet. Thank God, or maybe Congress, that my employer couldn't complicate my choices by refusing to grant me leave in order to do so."

Testimony of Patricia Connell at Chicago, Il Hearing, May 8, 1995, U.S. Commission on Leave Public Hearing.

A sizable majority of employees who take leave return to their same employers after leave, according to both the Employer and Employee Surveys. Workers in the lowest family income category and leave-takers with no wage replacement at all, are more likely not to return to work. Employees with higher family incomes, those working at covered worksites, and those receiving full wage replacement are more likely to return to their same employers. Not surprisingly, then, salaried employees and unionized workers are more likely to return to their employers. Leave-takers with full wage replacement are far more likely than those with either partial or no wage replacement to return to their employers after leave.

Inset 7-6

Walter Fish: Leave to Care for a Seriously Ill Spouse

Walter Fish began taking vacation days from work when his wife, Debbie, was hospitalized for diabetes complications. While she was in the hospital, an infection in her right eye aggravated a glaucoma condition, and she lost her vision. Mr. Fish called his personnel director, who told him about the Family and Medical Leave Act. Although he had heard of the Act, he knew little about it.

On February 29, 1995, Walter Fish took FMLA leave, arranging for people to take over responsibilities for a small catering business which he and his wife ran on the side, and rushed his wife to the W.K. Kellogg Eye Center, in Ann Arbor, MI. The Eye Center admitted her for four days, where doctors performed laser surgery on both eyes and glaucoma surgery on the right eye. Mr. Fish was able to remain with her until she was released. Very soon thereafter, he had to bring Mrs. Fish back to the Eye Center for glaucoma surgery on the left eye. This was followed by many more doctors visits. When his wife returned home she was unable to care for herself or their son. Mr. Fish cooked, cleaned house and cared for his wife and their child during her convalescence.

On April 3, 1995, a little over a month later, he was able to return to work. At the time of their testimony, August, 1995, Mrs. Fish had regained 60 percent of the vision in her right eye. Mr. Fish said at that time: "I feel very strongly about the Family [and Medical] Leave Act because at my workplace they do have an attendance policy. I would have lost my job. Without the Act I could have lost our small business also. I feel I helped strengthen my wife's hopes and determination to keep fighting."

Testimony of Walter Fish at Washington, DC Hearing, August 4, 1995, U.S. Commission on Leave Public Hearing.

The most common strategy used by leave-takers to cover lost wages was "limiting extras" (75.5 percent) followed by the use of some type of savings (40 to 44 percent). Those with the highest levels of education are least likely to put off paying bills or to cut leave short. Those with the highest levels of income are least likely to put off paying bills or go on public assistance. Conversely, those whose family incomes are $20,000 per year or less are at least four times more likely than those with higher incomes to go on public assistance in order to deal with lost income.[1]

The demographic profile of employees who needed but did not take leave - "leave-needers" - differs in several regards from that of the overall sample. For example, hourly workers are especially likely to need but not take leave, as are those with one or more children, employees with family incomes under $30,000 per year. Leave-needers are more likely to have wanted to take leave for some type of family leave reason than are leave-takers. The primary reason cited leave-needers for not taking leave is that they could not afford to (64 percent).

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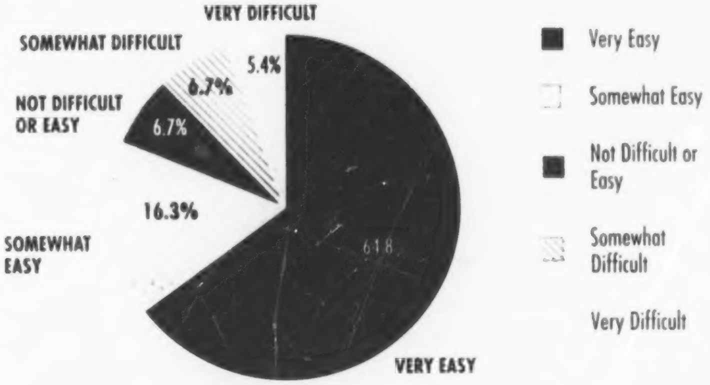
[1] Katherine McGonagle, et al., *The Impact of the Family and Medical Leave Act: An Employee Survey*, (Ann Arbor: University of Michigan, October 1995) p. 22.

About forty percent of all the workers surveyed report they are "very likely" or "somewhat likely" to take leave for an FMLA reason sometime within the next five years. Between 15 to 20 percent say it is "very likely", a figure that mirrors the percentage of employees who took leave during the period covered by the Employee Survey. The projected need for leave is somewhat greater for women than men. The largest percentage of employees who project that they will take leave in the next five years are the 25 to 34 year-olds, a group likely to experience caregiving demands from both young children and elderly parents.

FIGURE 7.1

Leave-Takers' Ease/Difficulty of Getting Leave



SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995

C. Employees' Views of Leave

1. The Ease/Difficulty of Getting Leave

It is not always easy for employees who need leave to arrange for time off from work. The Employee Survey asked leave-takers to state the relative ease or difficulty of getting leave. Most of those who take leave find it "very easy" or "somewhat easy" to get leave (81.1 percent), while 12.1 percent find it "somewhat difficult" or "very difficult" (see Figure 7.1). Slightly more employees in covered worksites find it "very" or "somewhat easy" to arrange leave

(82.1 percent) than those in non-covered worksites (78.8 percent), and employees in non-covered worksites were somewhat more likely to find it "very" or "somewhat difficult" to arrange leave (see Appendix E, Table 7.A).

Among those finding leave-taking especially easy are men (72.3 percent found it "very easy"), employees over 50 years old (77 percent found it "very easy"), and white leave-takers (69 percent found it "very easy"; see Appendix E, Table 7.B).

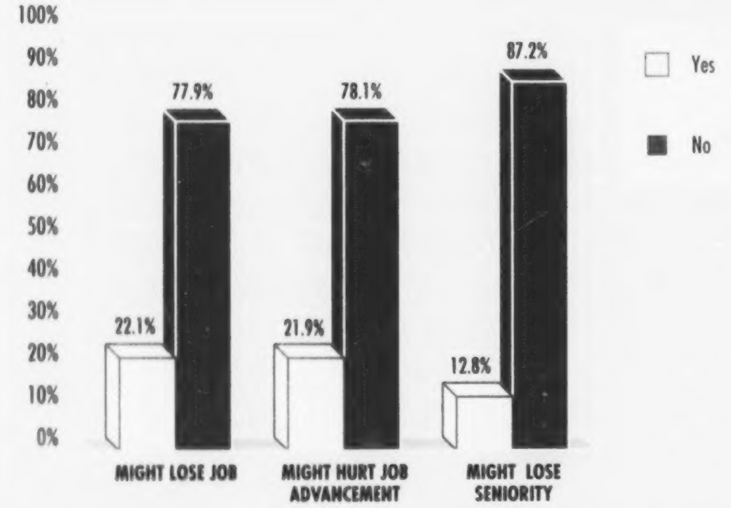
Certain sub-populations in a variety of demographic categories have more trouble getting leave. For example, 15.1 percent of women state it was "somewhat difficult" or "very difficult" as compared to eight percent of men.

2. Job-Related Worries About Taking Leave

Employees who take leave were also asked whether they were worried about taking leave for any one of several reasons: because doing so might lead them to lose their jobs; hurt their possibilities for job advancement; or make them lose seniority at their workplaces. Overall, over three-quarters of leave-taking employees did not report being worried about losing their jobs or hurting their chances for advancement, and 87.2 percent were not worried about losing seniority (see Figure 7.2).

FIGURE 7.2

Leave-Takers' Worries About Taking Leave



SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995.

The demographic profile of those who are not worried overlaps substantially with those of employees who find it easy to get leave (see Appendix E, Table 7.C).

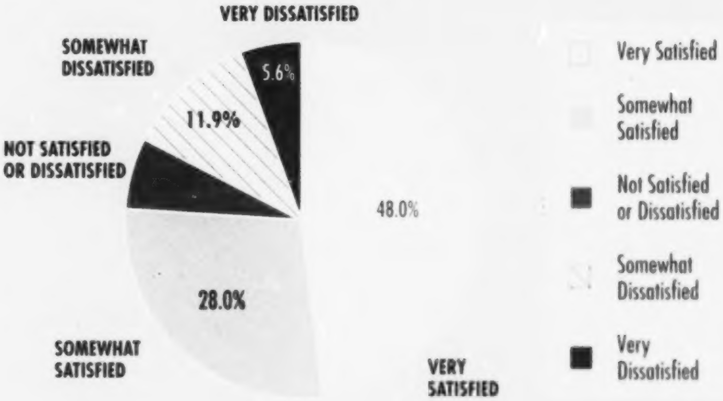
Thus, for example, about 18 to 19 percent of white employees worry about losing their jobs or hurting their job advancement, compared with well over a quarter of non-whites. Employees over 50 years old are far less likely to report being worried than all younger employees on all three dimensions measured. The level of worry decreases as education increases. Employees with annual family incomes between $50,000 and $75,000 are also relatively less likely to be worried on all three measures.

Hourly employees are relatively more likely to be worried about losing their jobs, hurting their advancement or losing seniority as a result of leave-taking, compared to salaried employees. Women are more likely to express worries about losing their jobs or hurting their possibilities of advancement, relative to men.

Worries about taking leave vary slightly according to whether a leave-taker works at a covered or non-covered worksite. For example, worries about seniority are reported by 13.9 percent of leave-takers at covered worksites compared with 9.7 percent of leave-takers at non-covered worksites. Worries about hurting job advancement are reported by 23 percent of leave-takers at covered worksites and 18.7 percent of those at non-covered worksites. On the other hand, leave-takers at covered and non-covered worksites report almost the same degree of worry about losing their job (see Appendix E, Table 7.D).

FIGURE 7.3

Leave-Takers' Satisfaction With the Amount of Leave they Took



SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995.

3. Satisfaction with Amount of Leave

The Employee Survey also asked leave-takers how satisfied they are with the amount of leave they took. As shown in Figure 7.3, 76 percent of employees are either "very satisfied" or "somewhat satisfied" with the amount of leave they took.

The relatively high level of satisfaction among all leave-takers holds across categories of sex, race, age, education, income and type of compensation (see Appendix E, Table 7.E). Here again the demographic profile of those who are most satisfied resembles that of employees who find it particularly easy to take leave and who are relatively less worried about taking leave. Most notably, employees over 50 years old are more satisfied than younger leave-takers with the amount of leave they took (about 64 percent are "very satisfied," compared with 43 to 49 percent of younger employees). Satisfaction with amount of leave is higher among those with annual family incomes over $30,000. Not surprisingly then, salaried employees are more likely to be "very satisfied" or "somewhat satisfied" with the amount of leave they take (82.5 percent) than hourly workers (73.5 percent).

Women and men are about equally satisfied, although men are more likely to report being "very satisfied" with the amount of leave they took than women (54.2 percent compared with 43.6 percent). The same relationship holds for white versus non-white employees, with whites more likely to report that they are "very satisfied."

The degree of satisfaction is more pronounced for leave-takers working at covered worksites, 77.9 percent of whom report they are "very" or "somewhat satisfied," compared to 71.2 percent of those working at non-covered worksites (see Appendix E, Table 7.F). This corresponds to the fact that leave-takers in covered worksites, on average, take longer leave regardless of reason for leave, than leave-takers at non-covered worksites (see Chapter V).

In short, the majority of employees who take leave find it relatively easy to get leave, are not especially worried about the job-related consequences of taking leave, and are relatively satisfied with the amount of leave they took. To the extent that employees have trouble getting leave, express job-related concerns about taking leave and are dissatisfied with the amount of leave they took, these leave-takers are more likely to work in non-covered worksites. Women, non-whites and those in non-salaried positions are particularly likely to report negative experiences on at least one of these measures. This demographic profile is similar to that of employees who are relatively less likely to have wage replacement while they were on leave, who need but cannot take leave and who have relatively greater difficulties dealing with the lost income associated with taking leave.[2]

4. The Effect of Job Characteristics on the Leave-Taking Experience

The data from the Employee Survey that have been reported on in this chapter and in Chapter V suggest a pattern of demographic and job characteristics associated with relatively positive employee experiences with leave-taking. Whether one looks at the ease or difficulty of getting leave, relative satisfaction or dissatisfaction with the amount of leave, the extent of wage replacement (if any) during leave, or job-related worries about taking leave, the experiences of men, older employees, whites, salaried employees and those with higher levels of education and family income are the most positive.

We know from research on the extent and availability of family and medical leave before the Acts passage that employees working in larger worksites and with relatively higher levels of education, income and job responsibility have typically been more likely to have leave available to them (and to have some form of wage replacement). Since higher-educated, higher-income, salaried, older white men tend to be in relatively secure and higher-level positions, the question is raised of whether - continuing the pattern observed before the Act's passage - access to leave is related to job characteristics.

The Employee Survey did not include measures of skill, individual income, job satisfaction or the extent of benefits. However, the method by which employees are compensated - that is - whether an employee was salaried, paid by the hour or paid in some other way, does tell us something about the kinds of jobs and work lives they have. The great majority of employees are either salaried or hourly employees (that is, not working on a piecework or commission basis). People who are salaried are most likely to be managerial, professional or semi-professional, technical or mid- to high-level administrative employees. Those who are paid by the hour are more likely to be relatively lower-paid and work in a variety of clerical, sales, service or manufacturing jobs.

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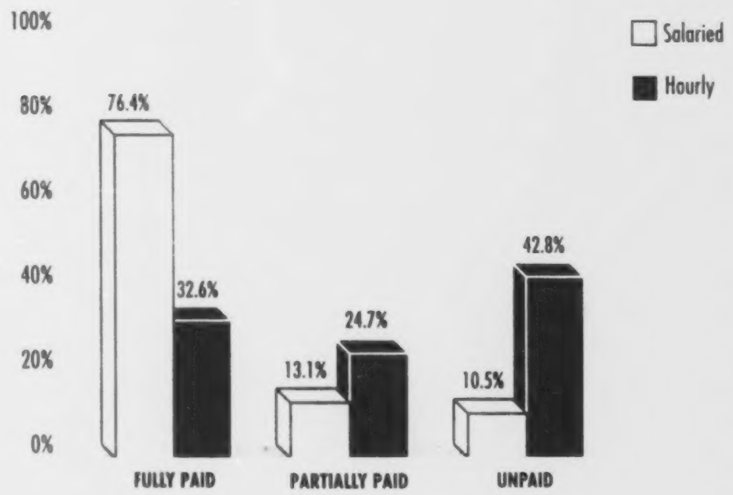
[2] See Chapter V for a more detailed discussion of these issues

The contrast between the leave experiences of these two groups supports the idea that the salaried/non-salaried distinction has implications for the nature of the leave-taking experience (see Figure 7.4). About three-quarters (76.4 percent) of salaried employees receive full pay during their leave, compared with a third (32.6 percent) of hourly workers. Only 10.5 percent of salaried employees report receiving no pay whatsoever, compared with 42.8 percent of hourly employees.

FIGURE 7.4

Leave-Takers: Extent of Pay by Type of Compensation



SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995

Salaried employees are slightly more likely to return to their jobs after their leaves were over. Salaried employees were somewhat more likely than hourly employees to report having to use savings earmarked for leave (48.8 percent compared with 44.4 percent). Hourly employees are more likely than their salaried co-workers to put off paying bills (41.9 percent compared with 27.3 percent) and to cut leave short (41.9 percent compared with 27.1 percent) (see Appendix E, Table 7.G).

In short, being salaried seems to be positively correlated with a positive leave-taking experience. Employees in salaried positions tend to have a greater chance of working for a covered employer, and of being eligible to take leave under the Act and to have more positive experiences with leave-taking policies generally, and the FMLA in particular.

D. Portraits of Leave-Takers

To flesh out the picture of leave-taking embodied in the survey data and the hearing testimony, four open-ended interviews were conducted with leave-takers.[3] The interviews covered what was involved in arranging leave, the nature of the leave-taker's relationship with their organizations while they were on leave, how their work was covered and how they viewed the costs and benefits of their leave experiences.

1. Arranging Leave, Methods of Covering Work During Leave and Return to Work

As noted above, over 80 percent of leave-takers find it relatively easy to arrange leave, although women, non-whites, non-union and non-salaried employees have relatively more trouble in this regard than other leave-takers. The most common method of covering the work of leave-takers, as reported by both surveys, however, is to delegate work to other employees. However, slightly more than one-third of employers report using temporary workers, while one-fifth of employers report that leave-takers did work at home while on leave. The Employee Survey also shows that a large majority of leave-takers return to their same employer, especially those in salaried positions who receive partial or full wage replacement.

The open-ended interviews conducted with professionals and managers, help to illuminate the concerns and experiences of one sector of FMLA-covered employees. Kim Martin is a 26 year-old white woman, married, and working as a low-level manager in the Human Resource Department of a large East Coast company.[4] She planned to use family and medical leave to lengthen her time away from work after her first child was born.

Ms. Martin's own position in her company involved helping other employees get leave, so she was familiar with the new law and company policy. In addition, her supervisor was very supportive of her taking leave. Ms. Martin was interviewed after arranging her leave but just before starting it, so information on her situation is somewhat limited. She expressed hesitation about maintaining any responsibilities while on leave, but also said she felt pressure from her employer not to make a complete break with work while she was on leave.

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[3] These interviews were conducted by Catalyst, Inc. See Chapter II for a full description of work done by Catalyst for the Commission on Leave.

[4] The names of all four leave-takers described here are pseudonyms.

Sam Thornton is a single, African American professional in his mid-twenties, working in the insurance industry. Mr. Thornton had worked with his company two years before he requested eight weeks of unpaid FMLA leave to care for his mother, who was extremely ill.

Mr. Thornton found his human resource department very helpful in arranging his leave, and all their materials on the FMLA clear and comprehensive. Mr. Thornton's work was covered by employees from other branches of his insurance company. He made a complete break from work. While he said he may have missed some opportunities, he received a promotion (which had been under discussion before he took leave) upon his return. He says he considered leaving the company, but, in fact, he returned to full-time work as planned.

Jane Johnson, a 24 year-old African American woman, is a professional in the finance department of a large East Coast company. She combined two different types of paid leave - short-term disability and vacation - with four weeks of unpaid FMLA leave, for a total leave of 14 weeks to have and care for a baby. The supervisor of Ms. Johnsons division was not especially understanding about her leave, making it clear to her that he assumed she would not return to work. She also received very little help with her leave from her personnel department (although she did get the assistance she really needed from a co-worker who had taken FMLA leave the year before). Ms. Johnson made a fairly complete break from work while on leave. A paid intern was hired to cover some of Ms. Johnson's responsibilities, while co-workers picked up her other duties. She kept in occasional touch with her department informally, did not feel that she missed any opportunities while on leave, and never considered either leaving the company or returning earlier than she had planned.

Wanda McMillan, a 34 year-old, married, white, high-level manager in a large East Coast company, used unpaid FMLA leave of six weeks to supplement her employer's six weeks of paid leave, for a total leave of 12 weeks to care for her newborn child.

Ms. McMillan had the most difficult time arranging her leave, despite the fact that she holds the most senior position of the four leave-takers interviewed. She found her human resources department and other employees confused about what the law actually mandates. She found it difficult to finalize her leave arrangements and her supervisor conveyed a negative attitude about her being away from the office for a long time.

Although Ms. McMillan completed major projects before her leave, she also agreed to maintain some formal responsibilities while on leave. The rest of her work was assigned to co-workers. Her co-workers were supportive, but she said of her supervisor: "He knows by law that he can not stop me from taking 12 weeks, but he is not exactly Mr. Supportive about it." She was worried about how he would treat her when she returned, uneasy about comments he made before she left about her future career plans and felt concerned enough about the implications of these comments that she kept a record of their discussions.

These leave-takers seem to typify employees in salaried positions. The length of each period of leave fell within the 12-week period specified by FMLA, three out of four had access to wage replacement for a portion of their leave, and all returned to work. To the extent they encountered difficulties, these difficulties again reflect the kinds of problems found in the Employee Survey data on salaried workers. That is, for the most senior among them, Ms. McMillan, her work could not be easily delegated to other workers. This in turn affected the ease of her arranging leave and created pressure for her to return to work before she was fully ready.

2. Personal and Work-Related Costs and Benefits of Leave-Taking

In the Employer Survey, worksites report that the largest positive effect of the FMLA is in the area of helping employees to care for family members. Over 30 percent of all covered employers and two-thirds of large covered employers report a positive effect in this area. This is confirmed by data from the Employee Survey in response to questions on attitudes regarding the FMLA and satisfaction with the amount of leave taken. Over 70 percent of employees support the idea that U.S. workers should have 12 weeks of job-protected family and medical leave and over three-quarters of leave-takers say they are "very" or "somewhat satisfied" with the amount of leave taken. The benefits to families who have used the FMLA leave is also captured in the personal stories employees told the Commission about the difference the FMLA made in their lives and the lives of close family members.

The Employee Survey also documents the costs to employees who take leave. Nine percent of respondents lost benefits while on leave and one-third percent of employees had no wage replacement during their leave. The lack of wage replacement was more pronounced for young workers, hourly workers and those with household incomes of $30,000 per year and less. While most employees were able to cover lost wages with savings or by limiting extras, nine percent had to go on public assistance to compensate for lost wages. While some leave-takers coped with lost wages and benefits, others had worries about the impact of leave-taking on their job status. A small but not insignificant number worried about losing their jobs (22.1 percent), hurting their chances for advancement (21.9 percent) or losing their seniority (12.8 percent).

Ms. Martin felt she had a basically supportive workplace, but noted that some people, especially men, have been hesitant to ask for leave because of worries about supervisors' or co-workers' reactions. She said the greatest benefit of the FMLA is that "it has given people peace of mind ... The law has given many people more confidence in asking for leaves." However, she also believes the Act has not done much to change her company's policies. Moreover, she was concerned about the lack of wage replacement, and felt lucky to be in a financial position that enabled her to take advantage of the Act.

Mr. Thornton had no negative experiences before or after his leave, and reported that the FMLA was widely used and supported by his co-workers and supervisors. In his view, employees who are perceived as especially valuable to the company (a category in which he included himself) had better chances of having their leave accepted. He saw himself as benefiting by being able to care for his mother while maintaining his job, but he also felt the company benefited in being able to retain a valued employee.

Ms. Johnson did not experience any particular problem with leave-taking, and said she "came back full force" despite her supervisor's assumption that she would not return at all. She felt her company was supportive of leave-taking overall, but that leave was less acceptable for those in particularly senior positions in the company, and that any leave lasting longer than three months was viewed with disfavor. She said she would use it again and recommend it to others, citing no negative consequences for her, either in terms of salary or with respect to opportunities for promotion. The greatest benefit of the FMLA for her was the "invaluable time at home with my child."

Ms. McMillan stated that the quality of her leave and that of co-workers at her company depended greatly on the flexibility and attitude of individual managers. Some managers, she said, had negative attitudes, which she hoped would not prevent others from taking leave. She saw the greatest benefit of the Act as being the job-protection provision, which she believed had influenced the culture of her workplace. "Seven years ago I had a friend who felt so uncomfortable about taking maternity-disability leave that she returned after six weeks," she said, adding that this would be much less likely to happen today. She also observed that it continued to be more difficult for men to take leave than for women, and that maternity leave was the most accepted type of leave. Finally, Ms. McMillan believed that six months of unpaid leave would be more reasonable than the current 12 weeks allowed, because a longer time period would give employees in diverse circumstances greater flexibility to arrange their lives to accommodate family and medical needs.

3. Summary

The stories told by these four leave-takers all reflect in one way or another the newness of the FMLA - the fact that employers and employees have not had much experience with the Act. This is captured by the ambiguities and uncertainties of which these employees spoke. Each referred to some kind of inequity in the way they saw the Act being applied in their particular organization. For example, Mr. Thornton believed that leave-taking by "valued" employees was more accepted in his insurance company than leave-taking by less valued workers. By contrast, Ms. McMillan's difficulties getting leave seem to be linked to the fact that she held a high-level position in the company, and her supervisors were reluctant to have her absent for an extended period.

The knowledgeability and attitude of these leave-takers' supervisors played especially important roles in influencing the quality of their experiences. The women encountered some problems with supervisors' attitudes.[5]

In general, the experiences of these four leave-takers are consistent with the picture painted by the survey data discussed in this and the two previous chapters. The leave taken by each of these four employees fell within the Act's 12-week mandate. The leave-takers expressed some concerns about taking leave but ultimately were able to go ahead with their plans. Two of the women experienced some difficulty getting leave. All four leave-takers returned to work as scheduled. Perhaps most importantly, in each case the leave played a critical part in allowing these employees to tend to important family and medical needs, while being able to return to their jobs. According to these interviews, these employees are better able to contribute to their organizations because of their leave-taking experiences.

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[5] Given the power of employee's supervisors over their job prospects, and given the fact that some employees surveyed reported job-related worries about taking leaves, this anecdotal data should be tested with more rigorous research on a group of employees with diverse occupations and skill levels.

E. Summary

The FMLA makes a significant difference to employees trying to sustain their family lives and work lives, at times when their own health problems or the needs of their dependents become pressing. The passage of the FMLA expands leave access to employees who might not otherwise be able to take leave and, perhaps most importantly, provides the minimum conditions that make it possible for employees to consider taking leave. The testimony before the Family Leave Commission illustrates the sorts of extremely difficult choices employees face when they need the FMLA. Clearly, the fact that jobs are guaranteed and health benefits are continued when they take leave has had a profoundly positive impact on employees' ability to meet both work and family responsibilities.

Research on the availability of family and medical leave before the passage of the Act suggests that the FMLA has indeed expanded access, especially to employees in relatively low-wage positions in the private sector. More leave, and more paid leave, was available to professionals, to employees at medium and large companies and to state and government employees before the FMLA was passed. In relative terms, this is still the case. However, the Act has gone a significant way toward expanding access to family and medical leave. Many of the employees who shared their stories with the Commission in public hearings might very well not have had access to leave before 1993.

Another way in which the Act expands access to leave is by including family leave to care for a seriously ill child, spouse or parent. Before 1993 it was extremely rare for private-sector workers to be able to take leave to care for ill elderly parents. Thus, Ms. Connell and Mr. Thornton - whose stories are described in this chapter - might not have been able to care for their ill mothers were it not for the FMLA.

The fact that the Act makes it possible for employees to use various wage replacement mechanisms (such as sick pay or vacation pay) to cover family and medical leave undoubtedly makes a big difference to those employees who are able to benefit in this way. The financial difficulties of leave-takers who are in the lower two income brackets ($30,000 or less in annual family income) - many of whom have to borrow money and use up savings, and some of whom have to cut their leave short or go on public assistance - indicate the importance of at least partial wage replacement in making leave possible at all for many employees.

Overall, the effect of family and medical leave policies in general, and the impact of the FMLA in particular, is substantial and positive for employees. At the same time, the data suggest two caveats. First, the leave-taking experiences of employees with relatively higher-levels of income and education, those in salaried jobs (and so on, as noted above) were more positive than leave-taking experiences overall. Employees who are younger, those in hourly jobs and non-union positions, those with lower incomes and educational levels are less likely to have wage replacement while on leave. Non-white and lower-income employees are disproportionately likely to lose benefits while on leave. In addition, it is not surprising that the leave-needers (those who needed but did not take leave) were more likely to be hourly workers, to have annual family incomes below $30,000 per year, and that 64 percent of this group report they could not afford to take leave.

Second, there are some ways in which people in relatively more privileged employment positions may have trouble getting access to the full extent of family and medical leave policies. For example, employees with family incomes of more than $75,000 per year are relatively less satisfied with the amount of leave they took than those earning between $50,000 and $75,000 per year. Indeed, salaried employees take much shorter leaves than hourly employees. This may be due to the pressures on them to return to work to resume the responsibilities that come with professional and managerial positions.

Thus, while family and medical leave policies and the FMLA clearly have had a positive impact on employees as a whole, these policies affect various groups of employees differently. Those at the lower end of the labor market - who tend to have more worries about taking leave, trouble getting leave and problems with covering lost wages during leave - and those at the top - who tend to take shorter periods of leave and who may feel pressure not to take leave because of their senior positions - experience different types of problems in taking family and medical leave. It is important to note that there is no cause and effect relationship here. These inequities were not created or exacerbated by the Act - rather, they reflect pre-existing segmentation of the labor market, with certain groups of employees enjoying more favorable circumstances than others.

PG&E

Analysis and Responses to Statutorily Mandated Questions

As reported in the previous chapters, the Commission on Leave has collected extensive scientific data and other kinds of information concerning family leave policies in general, and the Family and Medical Leave Act in particular. The Commission's findings cover many topics related to employers' leave policies and employees' leave experiences. Having explored many of the issues surrounding the need for leave and the implementation of voluntary policies, state laws and a new federal law, we now turn to the specific areas of inquiry posed to the Commission and specified in the statute which established it.

(A): "Existing and Proposed Mandatory and Voluntary Policies Relating to Family and Temporary Medical Leave, Including Policies Provided by Employers Not Covered Under this Act"

As a result of the Employer Survey, the Characteristics of Business Owners (CBO) survey and other data gathered in papers and through public hearings, we now have valuable information on the family and medical leave policies of both covered and non-covered employers since passage of the Family and Medical Leave Act. The Employer Study makes clear that the FMLA has had a significant impact on employer leave practices and especially on formal leave policies, with two-thirds of covered worksites changing some aspect of their policies in order to comply with the Act. Among those covered worksites that did make changes, the most common change was to increase the reasons for which employees can take leave. For example, 69.3 percent of employers changed their policies to grant male employees time off for family leave. Other common changes were allowing leave to be taken for a longer period of time, making the leave job-guaranteed, expanding health insurance benefits and easing employee eligibility requirements.

Chapter IV discusses in detail the results of questions asked both covered and non-covered employers about the types of benefits currently available under their family and medical leave policies. With respect to covered worksites, the data show that over 90 percent of employers at covered worksites provide up to 12 weeks of job-guaranteed leave for each of the reasons specified under the FMLA, and some portion of this group have policies that go beyond the requirements of the Act. Among covered worksites, larger worksites with more than 250 employees are only slightly more likely to offer leave than worksites with 250 employees or fewer. Over 90 percent of employers at covered worksites also continue health benefits, and guarantee a job upon return from leave for the reasons specified in the Act.

The proportion of employers at non-covered worksites that offer benefits on a uniform basis is much lower. Fewer than one-half of employers at non-covered worksites offer 12 weeks of job-protected leave for reasons provided under the Act. Employers at smaller, non-covered worksites tend to have relatively informal policies regarding the use of leave, which depend on the particular circumstances of the employer and of the employee requesting leave. Among the non-covered worksites, there are significant differences in the availability of 12 weeks of leave, with worksites that have fewer than ten employees less likely to offer 12 weeks of job-guaranteed leave for each of the reasons under the Act. The percentage of employers at non-covered worksites that continue health benefits changes with each reason for leave, ranging from 69 to 86 percent. A substantial majority (at least 84 percent) of employers at non-covered worksites who offer 12 weeks of leave do guarantee employees their jobs for each of the reasons specified in the Act, but that is lower than the minimum 95 percent of employers at covered worksites who do so. Employers at non-covered worksites are also less likely to offer paid time off than are those at covered worksites, and are less likely to continue pension or retirement, or contributions to employees' life insurance plans and disability. Relatively few employers offer family and medical leave for reasons not included in the Act, although those that do are usually FMLA-covered worksites.

Approximately two-thirds (66.1 percent) of the U.S. labor force work for covered employers, and certain subgroups of America's labor force are more likely than others to be among that group. Employees with higher levels of education, hourly workers, families with higher income levels and unionized workers enjoy the greatest proportion of coverage. An employee's racial or ethnic background is also correlated with the likelihood that he or she will be working for a covered employer, with African Americans the most likely to be covered. Least likely to be working for a covered employer are employees from households with the lowest family income levels, with the lowest education levels, the youngest workers and Latino workers.

Despite the fact that two-thirds of workers are employed at covered worksites, only slightly more than half (54.9 percent) of U.S. workers, public and private-sector combined, actually meet the Act's eligibility requirements for taking leave, based on length of service and hours worked. The number of eligible employees drops to less than half (46.5 percent) for those in the private sector. The disparity between the extent to which employees are "covered" versus "covered and eligible" is greater for three subgroups of workers: those 18 to 24 years old, those who have never been married and those with annual incomes of $20,000 or less.

Only about ten percent of all private-sector U.S. worksites are covered by the Act, but they employ 60 percent of the country's private-sector employees. Industries with the largest worksites, such as manufacturing, also have a large number of eligible employees working in a relatively small percentage of worksites.

The overall rate at which employees are utilizing the Family and Medical Leave Act is between two and four percent. The Employer Survey, which covers only the private sector, finds that at covered worksites the ratio of employees taking leave under the FMLA is 3.6 for every 100 employees. This ratio varies somewhat by both the size of the organization, as well as by type of industry. Employees in the manufacturing sector are more likely to have used the Act than are employees in the retail industries.

The Employee Survey finds that of the household members who had been employed in either the private-sector or the public-sector within the 18 months prior to the survey interview, two out of every 100 employees have taken leave using the Family and Medical Leave Act. While 16.8 percent of all employees surveyed have taken leave for a reason covered by the FMLA, not all leave taken have necessarily been identified as "FMLA leave." Of the 16.8 percent who have taken leave, seven percent of that group took leave "under the FMLA." Given that 55 percent of all employees work at covered worksites and are eligible to take leave under the Act, the Employee Survey finds that the overall FMLA-utilization rate among employees at covered public and private-sector worksites is two percent.[1] Combining the findings of the Employer and Employee Surveys, approximately one-and-a- half million to just over three million workers took FMLA leave during the 18 months covered by both surveys.

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[1] The Employee Survey had a strict set of criteria for determining whether an employee's leave was taken "under the FMLA." The employee had to meet the eligibility rules specified by the Act, had to have knowledge of the FMLA, and had to designate their leave as "FMLA-leave." This may explain in part why the FMLA utilization rate is lower in the Employee Survey than the Employer Survey.

In addition to the 16.8 percent of employees who have taken FMLA-covered leave, approximately 3.4 percent needed to take leave but did not. Thus, according to the Employee Survey, approximately one-fifth of working Americans need to take leave for family and medical reasons.

In sum, a look at the changes that employers made to comply with the Act and the resulting access of almost two-thirds of U.S. employees to family and medical leave policies present a picture of important changes that can be attributed to the Act - both the benefits offered by employers and the leave options available to employees. To be sure, prior to the Act, many employers did voluntarily provide some degree of family and medical leave coverage to their employees. A small number of those employers had policies that matched, or even surpassed FMLA requirements in the protections they offered. But until the FMLA, the overall picture was that of a patchwork quilt, in which different employers offered different types of leave with a range of eligibility requirements and specifications. Many voluntary policies were informal and applied unevenly among employees. Employers may have provided leave, but not for all the reasons offered by FMLA, especially family leave provisions which allow employees to care for the serious health condition of an ill parent, child or spouse, or for parental leave to care for a newborn. Leave was sometimes handled informally, or on a case-by-case basis, was often for a shorter duration, and health insurance and other benefits were not necessarily maintained. Perhaps most significantly, the discretionary nature of many leave policies meant that leave-taking employees did so at some risk to their job security, benefits and other issues.

Thus, the data reveal that even at this early stage, the Act has succeeded in replacing the piecemeal nature of family and medical leave policies with a more consistent and uniform standard that assures a minimum level of protection to all eligible employees. The FMLA, with its signature features of guaranteed job protection and maintenance of health benefits, begins to emerge, even now, as a major step forward in helping working Americans meet their medical and family caregiving needs while still maintaining their jobs and their economic security.

(B): "The Potential Costs, Benefits and Impact on Productivity, Job Creation and Business Growth of Such Policies on Employers and Employees"

1) Employers

The information used to assess costs and benefits for employers is derived from three key areas of inquiry on the Employer Survey, namely: ease of compliance with the administrative activities associated with FMLA; costs of administration, benefits, hiring and training; and the effect of the Act on factors related to the performance of the worksite and its employees. It should be noted that this is an assessment based on the first two years of experience with the new law.

Among covered worksites, the vast majority of respondents find that both general compliance and the administrative activities associated with implementing the Act are either "very easy" or "somewhat easy." Specifically, over 90 percent of employers at covered worksites found it "very" or "somewhat easy" to determine whether the Act applies to their worksite, and to determine employee eligibility. Between 74.3 percent and just over 80 percent of employers at covered worksites report additional record-keeping and coordination of state and federal leave laws, other federal law, and other leave policies to be "somewhat" or "very" easy. In short, a sizable majority of employers at covered worksites report few or no problems with administering the Act. The area with which covered employers appear to have the greatest difficulty concerns the management of intermittent leave under the FMLA. Thus, while the majority of employers at covered worksites (60.8 percent) find it either "very" or "somewhat easy" to manage the Act's intermittent leave provisions, 39.2 percent find them either "somewhat" or "very difficult." The use of intermittent leave, however, is relatively low, with only 11.5 percent of leave-takers taking intermittent leave.

Covered-worksite respondents to the Employer Survey were also asked to rate the extent of cost increases they had experienced in four broad areas: general administrative costs; the cost of continuing health benefits to employees taking leave; costs associated with hiring and training replacements for employees taking leave; and "other" costs. The great majority report no cost increases at all, or only slight cost increases in all four categories. With respect to administrative costs, 89.2 percent of employers at covered worksites report no or only small cost increases. Over 90 percent of covered worksites report no or small increases in costs associated with continuing employee benefits during leave. No or small increases in costs are reported with respect to hiring and training by over 95 percent of employers. Finally, 98.5 percent of employers at covered worksites report no or small cost increases in other areas.

With respect to benefits to employers resulting from the Act, very few employers report any significant cost savings. A number of employers who testified at the hearings pointed out some of the benefits to their worksites that accrued from the Act. In addition to cost savings, some employers found that the Act has helped them establish uniformity and consistency in their family and medical leave policies. Several employers testified that by providing family and medical leave to their employees, the Act benefits their worksite, as well. For example, several employers cited benefits from a lowering of employee turnover.

With respect to the Act's impact on three measures of business performance - productivity, profitability and business growth - the data reveal that most respondents experience no noticeable effects. To the extent that employers do report an effect, they are about equally likely to note a positive effect as a negative effect regarding business productivity and growth. More employers cite a negative effect regarding business profitability. With respect to the Act's impact on five measures of employee performance - productivity, employee absence, turnover, career advancement and help balancing work and family - again, the majority of covered respondents report no noticeable effect. However, the positives outweigh the negatives on four out of five of these measures. For example, over one-third of employers note a positive impact on employees' ability to care for family members, while only 0.2 percent report a negative effect. And, as discussed below, the positive effect jumps to 71 percent for the largest employers. In addition, 8.3 percent see a positive effect on employees' career advancement, while less than one percent note a negative effect. Employee absence is the only measure of employee performance where the positive and negative effects are roughly equivalent.

In sum, while many concerns were voiced by the business community about the potential negative impact of the Act when it was under discussion by Congress, data from the Employer Survey indicate that the great majority of employers have experienced little or no effects from the Act. This includes the area of costs as well as those of productivity, job creation and business growth. For example, the data indicate that employee abuse has not surfaced as a significant problem; rather, the data present a picture marked by low employee utilization rates and short leave durations, with the vast majority of employees returning to their jobs.

2) Employees

The Employee Survey dramatically demonstrates the overall need experienced by employees for family and medical leave policies. A full 20 percent of employees surveyed either took leave for reasons covered by the FMLA or needed to take leave, but did not do so. In addition, two-thirds of all employees surveyed think they are "very" or "somewhat likely" to take leave for an FMLA reason sometime within the next five years. (Eighteen percent think it "very likely," and 47.5 percent say it is "somewhat likely.") As the Employee Survey indicates, the need for leave may not occur often, but when the need does strike, it is often urgent and immediate, making the provision of job-protected leave a major benefit to those covered by the FMLA.

The hearing testimony repeatedly underscored the importance to employees and their families of the ability to take leave when the need arose in their families' lives. Employees needed to take time off from work to fight cancer, to recuperate after childbirth, to care for a wife and newborn child, to accompany an ailing spouse to surgery, or to stay by a dying child. While the stories differed, certain themes were repeated throughout: the importance to employees of knowing that their health insurance would continue, and that their jobs would be there when they returned. Clearly, the FMLA can make a profound difference to employees struggling to balance the needs of work and family.

Prior to the Act, many employers voluntarily provided some degree of family and medical leave coverage to their employees. But often policies were partial in the types of leave provided. Jobs were often not guaranteed, nor were health benefits maintained. The passage of the FMLA has enabled more employees to take advantage of family and medical leave policies, under a more consistent and uniform standard that assures certain minimal levels of protection. As both the Employer Survey data and the hearing testimony made clear, a family-friendly leave policy can enhance employees' productivity. As one employer explained, the FMLA "is a dual benefit, and it will promote a productive environment and a strong dedication and loyalty."[2]

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[2] Testimony of Marsha Brock, Human Resources Manager, Casto Travel, at San Francisco, CA Hearing, June 28, 1995. *U.S. Commission on Leave Public Hearing Transcript*, p. 18.

The Employee Survey also points out several costs to employees associated with the current provisions in the FMLA and other family and medical leave policies. First, some employees are ineligible to take leave because of eligibility requirements related to their employer's size or their own hours and length of service. Second, there is a lack of wage replacement. Fewer than half of all leave-takers have full pay during their leave and the proportion of those with full pay drops significantly for workers 18 to 24 years old, hourly workers and those with low levels of education and family income. In order to cover lost wages, some employees must limit "extras," borrow money or use savings, and a small number go on public assistance. Others may cut short their leave before they or a family member are really ready for them to return to work.

Third, family and medical leave policies appear to affect various groups of employees differently. Those at the lower end of the labor market, and those at the top, experience different types of problems in taking family and medical leave, reflecting pre-existing segmentation of the labor market. Fourth, some employers may not be complying, judging by the fact that some employers at covered worksites reported they are not providing certain benefits required by the Act. While the newness of the law and lack of employer knowledge may account for some of the non-compliance, the fact remains that some employees lack the job protection and health benefits guaranteed under the FMLA. All in all, however, the data show that the benefits of the Act outweigh the costs to employees, and that the FMLA's impact on employees is substantial and positive.

(C): "Possible Differences in Costs, Benefits and Impact on Productivity, Job Creation and Business Growth of Such Policies on Employers Based on Business Type and Size"

1) Costs to Employers Based on Business Type and Size

As with the other measures of the effects of the FMLA, costs are more of a concern for larger compared with smaller covered worksites. The larger worksites are somewhat more likely to have seen "moderate" increases in administrative costs. The increased costs that larger worksites experience in administering the Act are consistent with employers' responses to questions concerning the degree of difficulty they had in administering the Act. When covered worksites are broken down into size categories - small (having fewer than 50 employees but qualifying as covered due to the 75-mile radius rule), medium-sized (50 to 250 employees) and larger (with more than 250 employees) - the data show that the degree of difficulty in administering the Act grows with the size of the worksite: worksites with more than 500 employees are more likely than those with between 250 and 500 to report difficulty coordinating the FMLA with pre-existing leave policies, and over three-fourths of those with more than 1,000 employees report difficulties implementing the Act's intermittent leave provisions.

Certain factors could account for the finding that larger covered worksites tend to have more trouble than smaller and medium-sized sites with these administrative functions. Larger worksites are more likely to have leave-takers, to be covered by other laws, to have pre-existing formal policies regarding leave and generally require more overall administrative adjustment and realignment than do the smaller worksites. The fact that smaller worksites are more likely to manage human resource policies informally may also partially explain the size differences concerning administrative difficulties. The hearing testimony indicates, as well, that at least some of the difficulty experienced by larger worksites in administering the Act can be attributed to start-up costs. Additional research over time will help to distinguish the relative weight of start-up costs versus ongoing, routine costs in the overall bottom-line calculations of employers.

In addition to administration of the Act, the continuation of benefits during leave are more likely to cause "moderate" cost increases for larger covered worksites. Only a very small percentage of covered worksites indicate that "other" cost increases have occurred due to the FMLA. Manufacturing worksites are slightly less likely to report small or no increases than the sample as a whole.

2) Benefits to Employers Based on Business Type and Size

Very few covered worksites report cost savings as a result of the Act (2.5 percent). Interestingly though, the larger worksites - those with more than 250 employees - that are more likely to incur costs from complying with the Act also report slightly more cost savings (7.5 percent) than covered worksites as a whole.[3] These savings may help to offset the relatively higher level of costs reported by larger sites, especially to the extent that they are start-up costs.

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[3] David Cantor, et al., *The Impact of the Family and Medical Leave Act: A Survey of Employers* (Rockville, MD: Westat, Inc., 1995), pp. 4-8, Table 4-7.

In addition, some of the examples of benefits raised by employers at the hearings pertain especially to the larger employers. Thus, for example, the FMLA can benefit those worksites - usually larger - already providing leave policies consistent with or more generous than the Act because it removes their competitive disadvantage in relation to other companies.

There are also direct benefits to employers in the form of enhanced employee productivity and reduced employee turnover, as well as indirect benefits to employers when employees are better able to handle their family responsibilities.

3) Impact on Productivity, Job Creation and Business Growth Based on Business Type and Size

As discussed above, most covered worksites experience no significant impact on business and employee performance as a result of the Act. The majority of employers at covered worksites cite little or no noticeable effect on productivity, profitability or growth.

In general, employers' views on the impact of the Act on business performance and employee performance vary across different size categories of covered worksites. Larger worksites report more negative effects of FMLA on business productivity, profitability, employee productivity and absences. On the other hand, they are much more likely than their smaller counterparts to find that the Act has had a positive impact on their employees' abilities to care for family members. Thus, while over one-third of covered worksites across size categories find that the Act has had a positive impact on their employees' abilities to care for family members, that is true of over 70 percent of the largest covered worksites.

Manufacturing sites are more likely to perceive negative effects on employee productivity. Employers in the service sector are more likely than those in other industries to note positive effects on employee turnover and absenses. Covered worksites in the service sector also report the most positive effects from the Act on business and employee productivity, while manufacturing sites are the least likely to report positive effects on these two dimensions. Overall, however, it is important to reiterate that most worksites do not experience any noticeable effects on business or employee performance, regardless of size or sector.

(D): "The Impact of Family and Medical Leave Policies on the Availability of Employee Benefits Provided by Employers, Including Employers Not Covered Under the Act"

The Employer Survey specifically addresses this issue by asking employers at worksites whether they reduced other existing benefits to offset any increased costs associated with the FMLA, and if so, what they were. The results are that very few (1.3 percent) employers at worksites find it necessary to reduce other employee benefits in order to comply with the FMLA.[4] No significant differences are found in benefit reduction as a function of worksite size or industry. For example, 1.4 percent of worksites with up to 250 employees and .6 percent of worksites with more than 250 employees reduce their benefits.

The Employee Survey respondents report that the most frequent reduction in benefits was paid time off, either in the form of sick days, personal leave or vacation leave. This probably means that their employers allowed them to use these types of paid leave for wage replacement during their FMLA leave. Employees also report some reduction in health benefits (8.2 percent of covered employees) and disability insurance (1.9 percent of covered employees).

The fact that minimal numbers of employers have needed to reduce other employee benefits in order to comply with the Act is consistent with, and reinforces the other data from the Employer Survey indicating that the costs of administering and implementing the FMLA are negligible or small for the great majority of employers.

(E): "Alternate and Equivalent State Enforcement of Title I with Respect to Employees Described in Section 108(a)"

Title I, Section 108 of the FMLA restricts teachers' ability to take certain types of leave ordinarily available under the Act. The restrictions pertain to intermittent or reduced scheduled leave, and leave near the conclusion of an academic term. Title IV, Section 401 of the Act provides that the FMLA cannot be construed to supersede any provision of any state or local law that provides more generous family or medical leave rights than those established under the Act. The Federal regulations implementing the FMLA provide that the Department of Labor will not enforce state family or medical leave laws, and states may not enforce the FMLA.[5]

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[4] Cantor, et al, pp. 4-12, Tables 4-10, 4-11

Mandated question E specifically charges the Commission to study alternate and equivalent state enforcement of Title I with respect to teachers. To do this, the Commission followed a two-pronged approach. First, the Commission developed a "state enforcement mini-survey" to answer this and other questions pertaining to individual state family and medical leave laws. Second, the Commission contacted major management and teacher organizations in the education field, inviting them to contribute their expertise to the research process.[6] Of the various educational organizations contacted, only the American Federation of Teachers (AFT) and the National Education Association (NEA) responded affirmatively, and each conducted studies designed to provide information about the special conditions in the FMLA applicable to teachers. Neither of these studies purports to be a scientific, random-sample survey. Rather, each offers useful but anecdotal information on the question posed to the Commission regarding the special conditions in the FMLA applicable to teachers.

1) Results of the State Survey

Following are the three mini-survey questions pertaining to teachers and the results:

a) What family and medical leave provisions exist in your state law that relate specifically to instructional persons (teachers)?
Thirty-three states responded to this question. Three states (Alaska, Connecticut and Oregon) and Washington, D.C. responded that they have had laws with specific provisions that pertained to teachers. Thirty states had no provisions specifically pertaining to teachers.

b) How are these provisions enforced? By whom?
Alaska, Connecticut, Oregon and Washington, D.C. each have enforcement provisions specifically relating to teachers. In Alaska, the provisions are enforced by

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[5] Federal Regulations of the Family and Medical Leave Act of 1993, Part 825.701(a), Subpart F, "Special Rules for Employees of Schools."

[6] The Commission contacted the American Association of School Administrators, the National School Board Association, the American Federation of Teachers, AFL-CIO, and the National Education Association, AFL-CIO.

the state's Bureau of Labor Standards. Connecticut's provisions are enforced by the state's Department of Administrative Services. In Oregon, the state's Bureau of Labor and Industry enforces the provisions pertaining to teachers. Finally, Washington, D.C. enforces its provisions through its Department of Human Rights and Minority Business.

c) What problems, if any, exist for local school administrators if they have to report to both state and federal enforcement entities?

All thirty-four states that responded to this question (including Connecticut, Alaska and Oregon), Washington, D.C. and Puerto Rico know of no problems for local school administrators resulting from reporting to both state and federal enforcement entities.

2)Results of the Surveys of Educational Professionals

a) American Federation of Teachers (AFT)

The purpose of the AFT survey was to learn about the impact of the new law, and the special leave provisions affecting teachers, on affected AFT members. The union looked at two states: one (Illinois) in which leave-of-absence rules are negotiated in collective bargaining or provided in state statute; and the other (Texas) in which leave-of-absence rules are established by school boards. This methodology was designed to determine if collective bargaining had any bearing on the practical application of the FMLA for members and their families.

The survey results show that teachers and other school employees are, in fact, taking leave without undue disruption. In all, 16 Illinois local members and 12 Texas local members have taken family and medical leave. The survey also finds that virtually all responding local representatives have heard of the FMLA and have at least a general understanding of the law. There are only three complaints among local respondents regarding implementation of the new law, two regarding the need for additional information and one concerning employer unwillingness to share information about the subject. Only a small minority of survey respondents indicated knowledge of the special leave provisions affecting classroom teachers under the law. AFT plans to correct this shortcoming by providing each local with a reference guide to FMLA, including examples that apply to classroom teachers.

Only a small fraction of surveyed locals have actually incorporated the provisions of the FMLA into their contracts. Locals in both states were eligible for maternity and child care leave before the enactment of the FMLA. A majority of Illinois respondents, and four out of nine Texas locals, state that school-related personnel (such as bus drivers, cafeteria workers, custodians and secretaries) are not required to work 1,250 hours to be eligible for FMLA protections; they are automatically covered.

In evaluating the importance of new protections provided under the FMLA, local respondents from both states cite the job security provisions, maintenance of health insurance coverage and the expansion in the types of leave available to workers, particularly parenting leave for fathers.

b) National Education Association (NEA)

The NEA survey of their state affiliates elicited information on the level of coverage, the extent of FMLA use, the impact on the workplace and suggestions for further improvements in the FMLA. The survey finds that: 1) most of the educational employees in the respondent states were covered by some level of family and medical leave prior to passage of the FMLA; 2) 48 percent of the respondents indicate that coverage for family leave improved with the passage of the law, while 32 percent respond that coverage for medical leave improved with enactment of the new law; 3) most respondents indicate that the level of use of family and medical leave is either relatively unchanged since passage of the FMLA, or that they do not have sufficient data on which to make a judgment about what changes there may have been in leave-usage; and 4) the number of grievances and lawsuits filed over family and medical leave has lowered in a few states since passage of the FMLA.

Finally, respondents recommend a number of changes in the FMLA. First, and most relevant to the query posed by Congress, respondents recommend eliminating the rule that allows employers to require educational employees to use additional unpaid leave beyond their FMLA leave when near the end of the school term. They also recommend extending coverage to small employers and part-time employees, making unpaid leave periods longer, providing for paid leave in place of unpaid leave, reducing the burden of health insurance costs during periods of unpaid leave and repealing the employer cost-recapture rules applicable to employees who do not return from unpaid leave.

(F): "Methods Used by Employers to Reduce Administrative Costs of Implementing Family and Medical Leave Policies"

Prior to the passage of the FMLA, concerns were expressed that implementation of the Act would prove costly to employers, thus making cost reduction an important factor to address. The data collected by the Commission on Leave indicate that employer costs are not a substantial burden. Rather, the Employer Survey finds that employer cost increases due to FMLA are either absent or small for the majority of worksites, and this finding is corroborated by the Characteristics of Business Owners survey conducted by the Census Bureau. Thus, while the importance to employers of cost reduction in principle should not be minimized, it does not present itself as a significant factor with respect to the FMLA thus far.

The hearing testimony points out particular start-up problems experienced by employers, including those pertaining to coordination with state laws, record-keeping and training.[7] The testimony also provides examples of a number of ways in which employers have sought to minimize their administrative costs and burdens. Some employers have developed training programs on FMLA for managers and supervisors, which operate to decrease costs over time.[8] Others have developed software programs that make family and medical leave policy information available to employees on-line.[9] In providing estimates of initial costs to employers of complying with the Act, the Employer Study provides good base-line data for future research to assess cost-reduction methods over time.

(G): "The Ability of Employers to Recover the Premiums Described in Title I, Section 104(c)(2) of the Act"

The Family and Medical Leave Act provides that the employer may recover the premium paid for maintaining health insurance coverage during the employee's unpaid leave under the Act if the employee fails to return from leave, subject to certain conditions. The purpose of this section is to defray the costs incurred by employers in situations where leave-takers decide to terminate employment and do not return to work.

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[7] Testimony of Valerie M. Pinkert, Vice President, Bank of America, at San Francisco,CA Hearing, June 26, 1995, *U.S. Commission on Leave Public Hearing Transcript*, pp. 14-15, 52; Testimony of Catherine A. Morris, Corporate Human Resources, ARCO, at San Francisco, CA Hearing, June 26, 1995, *U.S. Commission on Leave Public Hearing Transcript*, p. 68; Testimony of Rhoma Young, Rhoma Young & Associates, at San Francisco,CA Hearing, June 26, 1995, *U.S. Commission on Leave Public Hearing Transcript*, pp. 71-2; Testimony of Ronald Compton, CEO Aetna Life and Casualty Company, at Washington, D.C. Hearing, August 4, 1995, *U.S. Commission on Leave Public Hearing Transcript*, p. 19.

[8] Testimony of Diane Duval, Corporate Benefits Manager, Lotus Development Corporation, at Washington, DC Hearing, August 4, 1995, *U.S. Commission on Leave Public Hearing Transcript*, p. 25; Testimony of Catherine A. Morris, Corporate Human Resources, ARCO at San Francisco, CA Hearing, June 26, 1995, *U.S. Commission on Leave Public Hearing Transcript*, p. 102.

[9] Duval, p. 25

In order to assess the prevalence of this situation, the Employer Survey asked respondents in worksites with at least one FMLA leave-taker whether any employee that took FMLA leave did not return to work. The Employer Survey finds that one-third of the worksites have had this situation occur, with the majority of this group (86.6 percent) having had only one leave-taker not return.[10] The Employer Survey further finds, however, that very few worksites (7.3 percent of the one-third who had a leave-taker not return) have attempted to recover health insurance benefit payments, even though they are entitled to do so under the Act.[11]

(H): "The Impact on Employers and Employees of Policies that Provide Temporary Wage Replacement During Periods of Family and Medical Leave"

There are several sources of information for understanding the impact of temporary wage replacement policies on employers and employees. The Employee Survey data provide a picture of the availability of wage replacement to leave-takers in both covered and non-covered worksites following passage of the FMLA. In addition, a "white paper" prepared for the Commission by the Radcliffe Public Policy Institute provides data about the status and impact of paid leave policies prior to 1993.[12] Finally, there is qualitative data on the issue of wage replacement in the hearing testimony and Catalyst interviews.

1) Employee Survey: Wage Replacement Data

While the Act does not include a mandate for paid leave, it does include provisions for employers or employees to apply wage replacement provided for other kinds of leave (sick leave or vacation pay) to family and medical leave. The Employee Survey does not distinguish between wage replacement specifically for family and medical leave, on the one hand, and sick leave pay or vacation pay, on the other.

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[10] Cantor, et al., pp. 4-14, Tables 4-12, 4-13.
[11] Ibid., pp. 4-12, Table 4-14.
[12] Kirsten S. Wever, *Improving Access to Family and Medical Leave: Temporary Partial Wage Replacement Options* (September 29, 1995).

The Employee Survey finds that a significant percentage (46.7 percent) of all leave-taker respondents receive full wage replacement during their leave. Of those working in covered worksites, 51.9 percent receive full pay while on leave, and 21.5 percent receive partial wage replacement. The percent age of leave-takers receiving full pay is significantly lower for the youngest employees, hourly employees and those with the lowest education and income. No wage replacement whatsoever is received by 26.6 percent of leave-takers in covered worksites and over half (53 percent) of employees working at non-covered worksites.

Those employees taking leave for their own health are most likely to have full or partial wage replacement (probably in large measure sick pay, followed by vacation pay, disability insurance or a combination of these). Partial wage replacement is most common for maternity-disability leave-takers. This may reflect the fact that some private sector employers provide disability insurance plans[13] and that five states have mandated Temporary Disability Insurance (TDI) systems which include partial wage replacement for pregnancy and childbirth-related disabilities.[14]

There are some significant demographic variations as to the likelihood that a leave-taker will receive wage replacement. Salaried employees, unionized employees and those with higher levels of household income are most likely to receive wage replacement. Conversely, those who receive no pay during their leave tend to be nonsalaried, non-union and low-income respondents.

The most striking difference between employees' levels of wage replacement while on leave is found with respect to education. The likelihood of a respondent's having received full or partial wage replacement increases as education rises, from 53.8 percent of leave-takers with less than a high school education receiving either full or partial pay to 79.6 percent of those with at least a four-year college degree receiving compensation. The relationship between the level of wage replacement and income closely parallels the findings with respect to education. In general, lower-income employees are far less likely to have wage replacement. Likewise, non-salaried employees (who are more likely to have lower incomes and lower levels of education) are four times as likely as salaried leave-takers to report receiving no pay during their periods of leave. Other differences among subgroups also emerge, with men and older workers more likely to receive pay during leave, and Latino workers least likely to do so.

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[13] Employers voluntarily provide both short-term and long-term disability insurance. For example, the 1993 Employee Benefits Survey of Medium and Large Private Establishments found that 87 percent of full-time employees have short-term disability protection and 41 percent have long-term disability insurance.

[14] Although only five states in the U.S. have mandated TDI systems, it should be noted that three of the five states (NY, NJ, CA) account for 20 percent of the U.S. population.

The importance of wage replacement to leave-taking is underscored by the fact that 63.9 percent of all leave-needers (employees who need but did not take leave) report that they do not take leave because they cannot afford to go without a paycheck, even for a limited period of time. Fully 58 percent of those leave-needers working for covered employers and 72 percent of leave-needers at non-covered worksites say they are unable to take leave because they cannot afford the associated loss of wages. These employees are especially likely to be African American, to be hourly workers and to have low levels of family income. This is cited far more frequently than any other reason given for not taking leave by those who need leave.

In sum, the Employee Survey makes clear that many employers are already providing some measure of wage replacement to their leave-taking employees, most in the form of sick pay, disability insurance and vacation pay. The existence of some level of pay for different types of family and medical leave means that additional funding for leave should take these pre-existing forms of wage replacement into account.

2) U.S. Wage Replacement Policies in a Global Context

While the United States has no uniform system of wage replacement, many other countries do. Because U.S. businesses operate in an increasingly global marketplace, a look at the national wage replacement policies that exist in some of those other countries provides a valuable source of comparison. In making such comparisons, cultural, demographic and economic differences among nations should be taken into account. Most other advanced industrial countries have national legislation that provides employees with partial wage replacement for some period of time - ranging from about three to nine months when they take leave for reasons of personal illness or to give birth. The trend in many advanced industrial countries has been to encourage fathers to play greater roles in caring for their children by offering more and more generous forms of paid paternity leave. Paid leave for employees who need to take care of ill family members is fairly common when those in need of care are children; paid leave for taking care of spouses is rarer, and only a few countries offer any wage replacement in the case of eldercare leave.[15]

The mechanisms used to finance paid leave vary significantly across countries, ranging from employee-funded and employee/employer-funded insurance plans to plans financed entirely out of general tax revenues. As the paper cited above indicates, comparative political and economic analyses suggest that the costs to employers are negligible, and the benefits to citizens significant.

The United States stands out in international comparison in that national family and medical leave policy is unpaid, and is available only to those working in companies with 50 employees or more. However, the FMLA is more generous than leave policies in many other advanced industrial countries in that it covers a broader range of reasons for taking leave, especially in the area of family leave.

Many U.S. companies voluntarily offer wage replacement for certain kinds of employee leave. While hard data are scarce, many of these companies associate paid leave policies with higher levels of product and service quality, and improvements in productivity.[16] Nevertheless, many companies - particularly smaller companies - have expressed concerns about the costs of offering employees paid leave. Some suggest that one way of reducing cost differences among employers is to standardize leave policies broadly enough that individual companies offering leave are not placed at a competitive disadvantage to companies not offering leave.

The evidence concerning paid leave associated with Temporary Disability Insurance plans in the five states that have such programs suggests that paid maternity leave and leave for personal illness provide significant benefits for employees, in terms of job stability, income maintenance, long-range earnings potential and protection of savings. In addition, employer participation in TDI is relatively inexpensive. There is also evidence to suggest that the economic well-being of even small worksites (and certainly larger worksites as well) in states whose leave policies are more extensive than those of the FMLA do not suffer.

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[15] For example, in Sweden employees can take 30 days of paid leave to care for elderly relatives. See Lynn B. Gerald, "Paid Family Caregiving: A Review of Progress and Policies," *Journal of Aging and Social Policy*, Vol. 5, 1993.

[16] General Accounting Office, *The Changing Workforce: Comparison of Federal and Nonfederal Work/Family Programs and Approaches*, *Report to Congressional Committees* (U.S. General Accounting Office, Washington, DC, April, 1992).

The data reveal that many employees who currently have no access to paid leave would use it and benefit by it, especially low-income workers. Employees paid on an hourly basis and those with relatively low levels of education and income are less likely to have access to paid leave policies than are salaried employees and those with higher levels of education and income. Anecdotal evidence also suggests a strong preference among many employees for part-time leave, supporting the idea that partial wage replacement would be a significant benefit to working people.

CHAPTER 14

Future Directions: Commission on Leave Recommendations

COMMISION ON LEAVE RECOMMENDATIONS

Based on the information detailed in this report, the Commission on Leave developed and unanimously adopted the following recommendations.[1]

PUBLIC EDUCATION AND TECHNICAL ASSISTANCE

A. Increased Public Education on the Family and Medical Leave Act (FMLA)

The Commission recommends that the Labor Department do more to educate employees, employers and the public in general about the FMLA, including but not limited to: inauguration of a 1-800 number; on-going PSAs; employee rights and responsibilities education programs targeted to FMLA populations; distribution of information to libraries, schools, hospitals, community and senior centers, etc., and, as appropriate, on the Internet; increased distribution of materials to employers and employees; and special campaigns to educate doctors, social workers and other health professionals on their role in the FMLA and how they can help their clients use it — perhaps working with doctor, nurse, and social-worker associations and with medical colleges and other training institutions. The Labor Department should also identify other agencies that have on-going links to business, unions, health care providers or others who have a role in making the FMLA work, and encourage those agencies to assist in public education efforts.

B. Model Record-Keeping

The Commission recommends that the Labor Department, in consultation with the Commerce Department and the Small Business Administration, work with large and small business and employee representatives and software companies to develop model systems for record-keeping and for personnel practices that could be widely distributed to businesses to assist them in complying with FMLA.

C. Specific Areas of Technical Assistance and Public Education

(1) To better protect employee privacy, the Commission recommends that the Labor Department make clear, through technical assistance opinion letters, or other appropriate means, that the categories of information that

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[1] One voting member of the Commission was absent for this vote.

employers are to keep confidential be expanded to include requests for leave and orally-provided information (in addition to the actual medical certification documents).

(2) Because the FMLA's overlap with other state and federal laws has proven confusing to the public, the Commission recommends that the Labor Department do more public education and technical assistance and, if appropriate, provide model record-keeping on the interaction of FMLA with the unemployment compensation program, with state laws and with other federal laws like the Americans with Disabilities Act and the Pregnancy Discrimination Act.

In particular, when an employee loses her or his job in violation of the FMLA, the employee should not be disqualified from unemployment compensation. The Commission recommends that the Labor Department issue guidance to state unemployment insurance programs to this effect.

(3) To address cultural barriers to leave-taking, the Commission recommends that appropriate federal agencies create a national business/employee Round Table to address corporate and general cultural barriers that prevent employees, male and female, from taking advantage of available family and medical leave policies. And the Labor Department should direct some of its efforts at increasing public awareness of the FMLA toward populations that are particularly affected by these cultural barriers.

DIRECTIONS FOR FUTURE RESEARCH

Introduction

There is no question that the work of the Family Leave Commission has provided rich sources of data about the impact of a particular kind of family-friendly workplace policy - family and medical leave policies - on employees and on employers. Indeed, the two new datasets that the Commission has created will no doubt be the subject of extensive further study. In fact, these two studies can yield much information that is useful to build upon and improve family and medical policies - useful not only to Congress and other public policy makers, but also to businesses, employee organizations and individuals. In addition, there are a number of areas of research that the Commission did not try to pursue, and that would also be extremely useful as a basis for improving future family-friendly workplace policies.

At the same time, the research community has evidenced a lively interest in the impact of family and medical leave policy at all levels - on the economy, on employers, on families, on individual employees, on children, on women, on the elderly and on society as a whole. The Commission urges that this interest, and the work that has already been done, be enhanced by researchers in the academy, in government and in businesses. Specifically, the following new research should be pursued:

(A) Building on the instruments developed for the Commission's two surveys, additional regular questions on family and medical leave should be added to existing and on-going government and private surveys, including the Census Bureau's Current Population Survey and the Bureau of Labor Statistics' Employment Benefits Survey;

(B) Additional research should be done to assess the impact of family leave policies (both those required by the FMLA and those voluntarily provided) on: child development and well-being, particularly the effect on the physical, cognitive and social development of children; child and family health, particularly the effect on parents' role in meeting their children's health needs; family and life functioning, particularly the effect on families' ability to provide an economically secure and nurturing environment for childrearing and other kinds of family caregiving;

(C) Additional research should be done to assess the impact of family leave policies (both those required by the FMLA and those voluntarily provided) on employees who do not have telephones - generally, low-income people - and on public employers and employees;

(D) Additional macroeconomic research should be done to assess the impact of family leave policies (both those required by the FMLA and those voluntarily provided) on countries' and companies' overall economic performance. Research on the domestic impact should take cognizance of the interaction between family leave polices and other benefit policies resulting from voluntary provision, state laws or other sources. Research on the impact on countries should take cognizance of the related impacts of factors such as culture, demographics and medical practices;

(E) Additional research should be done to assess the impact of family leave policies (both those required by the FMLA and those voluntarily provided) on temporary, part-time and contract workers;

(F) More in-depth case studies of employers who have been successful at providing family leave and other family-friendly policies should be conducted, to create a larger body of "best practices" information for employers and employee organizations to draw on;

(G) Better tools to measure the impact of family-leave policies on employees' morale, productivity, turnover and retraining loyalty and commitment to their employers should be developed;

(H) Research should be done on the relationship of family leave policies to containing health care costs of the nation, of businesses and of families;

(I) Additional research should be undertaken to identify effective approaches for employers to take to reduce the cultural barriers to taking leave; and those approaches should be disseminated;

(J) Research should be conducted on the implementation and application of the Act with regard to Congressional employees and employing authorities that parallels applicable areas of research with regard to the private and other public sectors. Such research should include, but not be limited to, education and awareness, incidence of leave-taking, discrimination, abuse and impact on family well-being. Of special interest would be research on how applying the FMLA to Congress affects the attitudes of policy makers and their employees toward the current trend of more fully applying private sector employment laws to Congressional employees and employers; and

(K) Additional research should be conducted on the long-term costs and benefits of family and medical leave policies for employers - including the impact on "no-fault" absence policies and on other benefits employers may provide voluntarily or through federal statute.

POLICY DIRECTIONS

A. Enforcement

(1) The Commission recommends that the Labor Department continue and strengthen its program of enforcing the Family and Medical Leave Act (FMLA).

(2) The Commission recommends that other federal agencies (in addition to the Labor Department) identify steps they can take to ensure full compliance with the FMLA by companies with which they work.

(3) The Commission recommends that Congress seriously consider making the same court procedures and remedies available to employees of the federal government as are available to other employees.

B. More Family-Friendly Policies

(1) *Wage Replacement*

The Commission's research and hearings show that by far, the major reason employees in FMLA-covered institutions do not take FMLA leave is that they cannot afford to do so. In addition, family and medical leave users often suffer financial hardship when they do take unpaid leave. Finally, many employers do already provide some form of paid leave voluntarily - indicating both their recognition of their employees' need and their own ability to provide paid leave through sick leave, disability insurance, paid childcare leave or other means. On the other hand, many employers - especially small employers - fear the additional costs that paid leave programs are likely to impose on their businesses.

The Commission makes no recommendation for or against federally-mandated paid leave. However, the Commission recommends that the development of a uniform system of wage replacement for periods of family and medical leave be given serious consideration by employers, employee representatives and others. Following are some such measures that employers, unions and states may undertake to provide wage replacement for periods of family and medical leave:

a. Employers should consider, voluntarily or through collective bargaining, establishing or expanding existing temporary disability insurance (TDI) to provide wage replacement for periods of family and medical leave, or otherwise providing paid family and medical leave benefits on as wide a scale as they can;

b. Unions should consider negotiating the establishment or expansion of existing methods for providing wage replacement to cover periods of family and medical leave, or otherwise providing for paid family and medical leave benefits on as wide a scale as they can;

c. States should consider voluntarily extending unemployment compensation qualifications to employees on family and medical leave; and

d. States should consider voluntarily establishing or expanding existing temporary disability insurance programs to provide wage replacement for periods of family and medical leave.

(2) *Additional family-friendly policies*

The Commission recommends that all American employers voluntarily take steps to ensure that their work environments affirmatively help their employees to combine their work and family obligations. For example, many employers already are providing not only paid family and medical leave, but also: flexible work schedules; part-time jobs; telecommuting; adoption benefits; facilities for nursing mothers to use for pumping during work hours; on-site child care; and emergency dependent care benefits.

(3) *The federal government should lead by example*

The Commission recommends that the federal government become a model "family-friendly" employer by, inter alia, ensuring that federal employees know about their FMLA rights; allowing employees to decide when and whether to substitute paid leave in all instances; considering standardization and extension of methods of wage replacement during periods of family leave; and providing other family-friendly workplace policies in-so-far as possible.

In carrying out any of the Recommendations of this Commission involving activities by the federal government, the Administration in its budget requests, and the Congress in its appropriations and other relevant legislation, should be sensitive to the need for adequate funding, as appropriate.

Appendix A

Fact Sheet on the Family and Medical Leave Act of 1993

FACT SHEET ON THE FAMILY AND MEDICAL LEAVE ACT OF 1993

Prepared by the Employment Standards Administration, Wage and Hour Division,
U.S. Department of Labor

The U.S. Department of Labor's Employment Standards Administration, Wage and Hour Division, administers and enforces the Family and Medical Leave Act (FMLA) for all private, state and local government employees, and some federal employees. Most Federal and certain congressional employees are also covered by the law and are subject to the jurisdiction of the U.S. Office of Personnel Management or the Congress.

FMLA became effective on August 5, 1993, for most employers. If a collective bargaining agreement (CBA) was in effect on that date, FMLA became effective on the expiration date of the CBA or February 5, 1994, whichever was earlier.

FMLA entitles eligible employees to take up to 12 weeks of unpaid, job-protected leave in a 12-month period for specified family and medical reasons. The employer may elect to use the calendar year, a fixed 12-month leave or fiscal year, or a 12-month period prior to or after the commencement of leave as the 12-month period.

The law contains provisions on employer coverage; employee eligibility for the law's benefits; entitlement to leave, maintenance of health benefits during leave, and job restoration after leave; notice and certification of the need for FMLA leave; and, protection for employees who request or take FMLA leave. The law also requires employers to keep certain records.

EMPLOYER COVERAGE

FMLA applies to all:

- public agencies, including state, local and federal employers, local education agencies (schools), **and**

- private-sector employers who employed 50 or more employees in 20 or more workweeks in the current or preceding calendar year **and** who are engaged in commerce or in any industry or activity affecting commerce including joint employers and successors of covered employers.

EMPLOYEE ELIGIBILITY

To be eligible for FMLA benefits, an employee **must**:

(1) work for a coveredemployer;

(2) have worked for the employerforatotal of 12 months;

(3) have worked at least 1,250 hours over the previous 12 months; and

(4) work at a location in the United States or in any territory or possession of the United States where at least 50 employees are employed by the employer within 75 miles.

LEAVE ENTITLEMENT

A covered employer must grant an eligible employee up to a total of 12 workweeks of **unpaid** leave during any 12-month period for one or more of the following reasons:

- for the birth and care of the newborn child of the employee;

- for placement with the employee of a son or daughter for adoption or foster care;

- to care for an immediate family member (spouse, child, or parent) with a serious health condition; **or**

- to take medical leave when the employee is unable to work because of a serious health condition.

Spouses employed by the same employer are jointly entitled to a **combined** total of 12 work- weeks of family leave for the birth and care of the newborn child, for placement of a child for adoption or foster care, and to care for a parent who has a serious health condition.

Leave for birth and care, or placement for adoption or foster care must conclude within 12 months of the birth or placement.

Under some circumstances, employees may take FMLA leave intermittently which means taking leave in blocks of time, or by reducing their normal weekly or daily work schedule.

- If FMLA leave is for birth and care or placement for adoption or foster care, use of intermittent leave is subject to the employer's approval.

- FMLA leave may be taken intermittently whenever **medically necessary** to care for a seriously ill family member, or because the employee is seriously ill and unable to work.

Also, subject to certain conditions, employees **or** employers may choose to use accrued **paid** leave (such as sick or vacation leave) to cover some or all of the FMLA leave.

The employer is responsible for designating if an employee's use of paid leave counts as FMLA leave, based on information from the employee.

"**Serious health condition**" means an illness, injury, impairment, or physical or mental condition that involves either:

- any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, and any period of incapacity or subsequent treatment in connection with such inpatient care; **or**

- Continuing treatment by a health care provider which includes any period of incapacity (i.e., inability to work, attend school or perform other regular daily activities) due to:

(1) A health condition (including treatment therefor, or recovery therefrom) lasting more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition, that **also** includes:

  - treatment two or more times by or under the supervision of a health care provider; **or**

  - one treatment by a health care provider with a continuing regimen of treatment; **or**

(2) Pregnancy or prenatal care. A visit to the health care provider is not necessary for each absence; **or**

(3) A chronic serious health condition which continues over an extended period of time, requires periodic visits to a health care provider, and may involve occasional episodes of incapacity (e.g., asthma, diabetes). A visit to a health care provider is not necessary for each absence; **or**

(4) A permanent or long-term conditionfor which treatment may not be effective (e.g., Alzheimer's, a severe stroke, terminal cancer). Only supervision by a health care provider is required, rather than active treatment; **or**

(5) Any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than three days if not treated (e.g., chemotherapy or radiation treatments for cancer).

"**Health care provider**" means:

- doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctors practice; **or**

- podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice, and performing within the scope of their practice, under state law; **or**

- nurse practitioners, nurse-midwives and clinical social workers authorized to practice, and performing within the scope of their practice, as defined under state law; **or**

- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; **or**

- Any health care provider recognized by the employer or the employer's group health plan benefits manager.

MAINTENANCE OF HEALTH BENEFITS

A covered employer is required to maintain group health insurance coverage for an employee on FMLA leave whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work. If applicable, arrangements will need to be made for employees to pay their share of health insurance premiums while on leave.

In some instances, the employer may recover premiums it paid to maintain health coverage for an employee who fails to return to work from FMLA leave.

JOB RESTORATION

Upon return from FMLA leave, an employee must be restored to the employee's original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment.

In addition, an employee's use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to **before** using FMLA leave, nor be counted against the employee under a "no fault" attendance policy.

Under specified and limited circumstances where restoration to employment will cause substantial and grievous economic injury to its operations, an employer may refuse to reinstate certain highly-paid "**key**" employees after using FMLA leave during which health coverage was maintained. In order to do so, the employer must:

- notify the employee of his/her status as a "key" employee in response to the employee's notice of intent to take FMLA leave;

- notify the employee as soon as the employer decides it will deny job restoration, and explain the reasons for this decision;

- offer the employee a reasonable opportunity to return to work from FMLA leave after giving this notice; **and**

- make a final determination as to whether reinstatement will be denied at the end of the leave period if the employee then requests restoration.

A "**key**" employee is a salaried "eligible" employee who is among the highest paid ten percent of employees within 75 miles of the work site.

NOTICE AND CERTIFICATION

Employees seeking to use FMLA leave are required to provide 30-day advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable.

Employers may also require employees to provide:

- medical certification supporting the need for leave due to a serious health condition affecting the employee or an immediate family member;

- second or third medical opinions (at the employer's expense) and periodic recertification; **and**

- periodic reports during FMLA leave regarding the employee's status and intent to return to work.

When intermittent leave is needed to care for an immediate family member or the employee's own illness, and is for planned medical treatment, the employee must try to schedule treatment so as not to unduly disrupt the employer's operation.

Covered employers must post a notice approved by the Secretary of Labor explaining rights and responsibilities under FMLA. An employer that willfully violates this posting requirement may be subject to a fine of up to $100 for each separate offense.

Also, covered employers must inform employees of their rights and responsibilities under FMLA, including giving specific written information on what is required of the employee and what might happen in certain circumstances, such as if the employee fails to return to work after FMLA leave.

UNLAWFUL ACTS

It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

ENFORCEMENT

The Wage and Hour Division investigates complaints. If violations cannot be satisfactorily resolved, the U.S. Department of Labor may bring action in court to compel compliance. Individuals may also bring a private civil action against an employer for violations.

OTHER PROVISIONS

Special rules apply to **employees of local education agencies**. Generally, these rules provide for FMLA leave to be taken in blocks of time when intermittent leave is needed or the leave is required near the end of a school term.

Salaried executive, administrative, and professional employees of covered employers who meet the Fair Labor Standards Act (FLSA) criteria for exemption from minimum wage and overtime under Regulations, 29 CFR Part 541, do not lose their FLSA-exempt status by using any unpaid FMLA leave. This special exception to the "salary basis" requirements for FLSA's exemption extends only to "eligible" employees' use of leave required by FMLA.

The FMLA does not affect any other federal or state law which prohibits discrimination, nor supersede any state or local law which provides greater family or medical leave protection. Nor does it affect an employer's obligation to provide greater leave rights under a collective bargaining agreement or employment benefit plan. The FMLA also encourages employers to provide more generous leave rights.

FURTHER INFORMATION

The final rule implementing FMLA is contained in the January 6, 1995, Federal Register. (An interim final rule was published in the Federal Register on June 4, 1993.) For more information, please contact the nearest office of the **Wage and Hour Division**, listed in most telephone directories under U.S. Government, Department of Labor, Employment Standards Administration.

Appendix B
Commissioner Biographies

ELLEN BRAVO

Ellen Bravo is Executive Director of 9to5, National Association of Working Women headquartered in Milwaukee, Wisconsin. Her organization has heard from thousands of employees struggling to balance work and family responsibilities through its toll-free Job Problem Hotline. Bravo wrote *The Job/Family Challenge: A 9to5 Guide* and co-authored *The 9to5 Guide to Combatting Sexual Harassment*. She frequently speaks to employers, working women and the news media about work/family issues.

SECRETARY RONALD H. BROWN (Ex-Officio Member)

Ronald Brown is the Secretary of Commerce. He also serves on the President's National Economic Council and the Domestic Policy Council. He is chairman of the Trade Promotion Coordinating Committee and of the National Infrastructure Task Force, co-chair of the U.S. - China Joint Commission on Commerce and Trade, Deputy Executive Director for the National Urban League, and past chairman of the Democratic National Committee.

U.S. SENATOR LARRY E. CRAIG (R-ID)

Senator Craig serves on the Energy and Natural Resources Committee and the Committee on Agriculture, Nutrition and Forestry as well as the Veterans Affairs Committee. He is Chairman of the Subcommittee on Forests and Public Lands Management and Forestry, Conservation and Rural Revitalization. He formerly served five terms as a U.S. Representative for Idaho. He also served three terms in the Idaho State Senate where he was Chairman of the Commerce and Labor Committee.

LELAND B. CROSS, Jr.

Leland B. Cross is a partner at the Indianapolis law firm of Ice, Miller, Donadio & Ryan. An expert in labor law, representing management, and entertainment law, representing presenters, Mr. Cross currently serves on the National Relations Board Advisory Commission. He was also chair of the Indiana Chamber of Commerce and Special Counsel to the State of Indiana in trade negotiations in Russia, Yugoslavia, and Poland, and Special Counsel to the Secretary of State of Romania.

U.S. SENATOR CHRISTOPHER J. DODD (D-CT), CHAIR

Senator Dodd is the ranking member of the Senate Labor Subcommittee on Children and Families and also serves on the Senate Budget Committee and the Committee on Banking, Housing, and Urban Affairs. He is the author of the Family and Medical Leave Act. His main areas of interest include children and families. He founded the Senate's Children's Caucus and is author of the 1990 Child Care and Development Block Grant. He was named Head Start Senator of the Decade for his efforts on behalf of children.

PAMELA L. EGAN

Pamela Egan is the Executive Director and Secretary-Treasurer for the Montana Family Union, AFL-CIO. She previously served as the Finance Director for Congressman Pat Williams. She is an expert in the areas of political, community and workplace organizing and her main interest lies in the economic empowerment of working families.

U.S. REPRESENTATIVE STEVE GUNDERSON (R-WI)

Representative Gunderson was first elected in 1980 and is currently a member of the House Economic and Educational Opportunities Committee where he serves on the Subcommittee on Postsecondary Education, Training, and Lifelong Learning. He also serves on the House Agriculture Committee, where he is Chairman of the Sumcommittee on Livestock, Dairy and Poultry and the Vice Chairman of the Subcommittee on Resource Conservation, Research and Forestry. Congressman Gunderson served as Chief Deputy Whip, under then Minority Whip Speaker Newt Gingrich, from 1989 through 1993. He has served on the Board of Trustees of Gallaudet University, in Washington, DC since 1985.

PHILIP LADER (Ex-Officio Member)

Philip Lader is the Administrator of the U.S. Small Business Administration. Mr. Lader formerly served as White House Deputy-Chief of Staff and Assistant to the President. Previously he was Deputy Director for Management at the Office of Management and Budget. In this capacity he served as Chairman of the Policy Committee of the National Performance Review, the "reinventing government" initiative led by Vice President Gore, and as Chairman of the President's Management Council. Mr. Lader was also President of Winthrop University in South Carolina.

DONNA R. LENHOFF, VICE CHAIR

Donna R. Lenhoff is General Counsel and Director of Work and Family Programs at the Women's Legal Defense Fund in Washington, DC. She has written and spoken extensively in the areas of equal opportunity for women, family and medical leave, sexual harassment, and constitutional rights. She led the coalition that developed and lobbied for the 1993 Family and Medical Leave Act. Her awards include Mirabella Magazine's "1,000 Women for the 1990s" Award.

LENORE MILLER

Lenore Miller is the President of the Retail, Wholesale and Department Store Union, AFL-CIO and Vice President of the AFL-CIO. She is Chair of the AFL-CIO Civil Rights Committee and Chair of the Jewish Labor Committee. In addition to her union activities, she is also Vice Chair of the President's Committee on Employment of People with Disabilities and a member of the President's Committee on Tariffs and Trade.

SCOTTIE THERESA NEESE

Terry Neese owns and operates five companies dominated by Terry Neese Personnel Services and Terry Neese Temporaries, celebrating 20 years in business. She is past president of the National Association of Women Business Owners, serves on two federal commissions, is a leader in the Oklahoma Association of Personnel Consultants, and pilots airplanes. She was honored by President Reagan as the National Women in Business Advocate of the Year, inducted into the National Women's Hall of Fame, and recently received the National Association of Women Business Owner's Public Policy Advocate of the Year Award.

SECRETARY OF LABOR ROBERT B. REICH
(Ex-Officio Member)

Robert B. Reich is the nation's 22nd Secretary of Labor. Before coming to the Labor Department he was a member of the faculty at Harvard University's John F. Kennedy School of Government. He served as an assistant to the Solicitor General in the Ford Administration and headed the policy planning staff of the Federal Trade Commission in the Carter Administration. He has written seven books and more than 200 articles on the global economy and the U.S. workforce.

RICHARD REINHARDT

Richard Reinhardt is President and CEO Of PII Affiliates, Ltd. in Manchester, Pennsylvania. An expert on small business and free enterprise economics, he is a member of the Executive Committee for the National Federation of Independent Business and the York County Industrial Development Board. He also sits on U.S. Representative Goodling's Health Advisory Board.

U.S. REPRESENTATIVE PATRICIA SCHROEDER (D-CO)

Representative Schroeder is a member of the House Judiciary Committee and the National Security Committee. Representative Schroeder has served as the Chairwoman of the House Select Committee on Children, Youth, and Families and was founder and Co-Chair of the Congressional Caucus for Women's Issues. She is author of *Champion of the Great American Family*, and was author of the first Family and Medical Leave Act in 1985. Representative Schroeder was inducted into the National Women's Hall of Fame in 1995 for her work on family issues.

SECRETARY DONNA E. SHALALA (Ex-Officio Member)

Donna Shalala is the Secretary of Health and Human Services. She previously served as the Chancellor of the University of Wisconsin-Madison and was the first woman to head a Big Ten University. She was also President of Hunter College at the City University of New York and was Assistant Secretary for Policy Development and Research at the Department of Housing and Urban Development during the Carter Administration. In 1992, *Business Week* named her one of the top five managers in higher education.

MARY TAVENNER

Mary Tavenner is a senior associate with the firm of Boland and Madigan and is Executive Director of the American Automotive Leasing Association. She previously served as the Senior Director of Government Relations for the National Association of Wholesaler-Distributors.

Appendix C
Commission Activities

A. PUBLIC HEARINGS

Chicago, IL Public Hearing
U.S. District Court,
Northern District of IL
May 8, 1995

Panel 1

Kenneth Weaver
Instrument and Electrical Technician
Lyondell Petrochemical Company
Victoria, TX

Patricia Connell
Supervisory Attorney
Legal Assistance Foundation of
Chicago
Chicago, IL

Linda Siebert Rapoport
Manager and Assistant Vice President
Work and Family Resource Center
First Chicago Corporation
Chicago, IL

Elliot Lehman
Co-Chairman, Emeritus
Fel-Pro, Inc.
Skokie, IL

David C. Kleiman
Director of Human Resources
La-Co Industries Inc./Markal Company
Elk Grove Village, IL

Panel 2

Albert R. Burns
Vice President, Retail, Wholesale, and
Department Store Union
Local 374
Battle Creek, MI

Stacey Ebel
Chicago Boys and Girls Club
Chicago, IL

Elizabeth Pedrick Sartain
Vice President, People Department
Southwest Airlines
Dallas, TX

Lloyd E. Falconer
Secretary-Treasurer
Seward Screw Products Inc.
Seward, IL

Sharon R. Beard
Owner
Hurrican Fence Company
Springfield, IL

Panel 3

Elizabeth M. Carlson
Director, Human Resources
National Futures Association
Chicago, IL

Cynthia A. Cain
Director, Arbitration
National Futures Association
Chicago, IL

Lori R. Solberg
Project Administrator
National Futures Association
Chicago, IL

Nedra Ward
Administrative Assistant
National Futures Association
Chicago, IL

Joseph Tully
Records Technician II
National Futures Association
Chicago, IL

San Francisco, CA Public Hearing
St. Mary's Medical Center
June 26, 1995

Panel 1

Mary Ann Thode
President and CEO
St. Mary's Medical Center
San Francisco, CA

Valerie M. Pinkert
Vice President and Manager,
Employee Relations
Bank of America
San Francisco, CA

Marsha Brock
Human Resources Manager
Casto Travel, Inc.
Sunnyvale, CA

Velma Parness
Continuing Education Specialist
University of California
San Francisco, CA

Jonathan Zingman
Principal Engineer
Teknekron Communications
Systems, Inc.
Berkeley, CA

Ann G. Daniels
Acting Executive Director
California Abortion and Reproductive
Rights Action League, North
San Francisco, CA

Rosalie Ferested
Grocery Store worker
Shelby, MT

Kate Kelly
News Anchor
Channel 5 Eyewitness News
San Francisco, CA

Panel 2

Catherine A. Morris
Corporate Human Resources
Benefits,
Atlantic Richfield Company (ARCO)
Los Angeles, CA

Rhoma Young
Principal
Rhoma Young & Associates
Oakland, CA

Margery Mayer
Principal
TeleConsultants, Inc.
Santa Clara, CA

Carol Griffin
Benefit Authorizor
Social Security Administrator
Richmond, CA

Kathy Gillespie
testified on behalf of two farmworkers
California Rural Legal
Assistance, Inc.
San Francisco, CA

Panel 3

Tina Benjamin
Disability Insurance Program
Manager III
California State Disability Insurance
Program
San Francisco, CA

Maria Blanco
Associate Professor and Supervising
Attorney
Women's Employment Rights Clinic
Golden Gate University School of Law
San Francisco, CA

Paul Gill
CEO, Mousefeathers
San Francisco, CA

Stephanie Aaronson
Consulting Research Associate
Institute for Women's Policy Research
Washington, DC

Washington, DC Public Hearing
U.S. Department of Commerce
August 4, 1995

Panel 1

Ronald Compton
Chairman and Chief Executive Officer
Aetna Life and Casualty Company
Harford, CT

Diane Duval
Corporate Benefits Manager
Lotus Development Corporation
Reading, MA

Terri Wolfe
Director of Human Resources
Patagonia, Inc.
Ventura, CA

Diane Atwood
Little Rock, AR

Chrisite Sens
First Grade Teacher
Fairfax County Public Schools
Arlington, VA

William Fish
Thompson Saginaw Ball and Screw Company
Saginaw, MI

Debra and Christopher Ruffin
Hyattsville, MD

Panel 2

Marsha Lawrence
Vice President, Public and Operator Services
Bell Atlantic
Silver Spring, MD

Nell Rivers
Human Resources Manager
Bell Atlantic
Silver Spring, MD

Denis R. Thompson
Director, Human Resources
Dallco Industries, Inc.
York, PA

Bernard P. Furin
Owner
Furin's of Georgetown
Washington, DC

Kevin Knussman
Trooper, Maryland State Police
Easton, MD

Shirley Butler
New Orleans, LA

Douglas Rosenfeld
Attorney
Derwood, MD

Panel 3

Deborah Wilburn
Senior Editor
Working Mother
New York, NY

Jim Johnson
Owner, Jim Johnson Photography
Washington, DC

JC Shardo
President, JCS Entertainment, Inc.
Atlanta, GA

Andrew Shotwell
Stay-at-home-Dad
Washington, DC

B. NATIONAL ACADEMY OF SCIENCES WORKSHOP ON FAMILY LEAVE

Washington, DC, October 23-24, 1995

Moderator:
Lotte Baylin
Massachusetts Institute of Technology

Presentation/Discussion of Employer Survey

David Cantor
Westat, Inc.

Presentation/Discussion of Employee Survey

Robert M. Groves
Institute for Social Research
Survey Research Center
University of Michigan

Katherine A. McGonagle
Institute for Social Research
Survey Research Center
University of Michigan

Panel on Cost/Benefits to Employers

Presenter:
Gary Burtless
Brookings Instuitution

Discussants:
Linda Williams
Department of Economics
University of Maryland

Marica Brumit Kropf
Catalyst, Inc.

Panel on Cost/Benefits to Employees

Presenter:
Naomi Gerstel
Department of Sociology
University of Massachusetts/Amherst

Discussant:
Morris Green
School of Medicine
Indiana University

Panel on Directions for Future Research

Presenters:
Deanna Gelak
Society for Human Resource Mangement

Ellen Galinsky
Families and Work Institute

Appendix D
Additional Views

The Commissioners decided that consensus views on "Future Directions" would appear in the body of this report as Recommendations (see Chapter IX) and that additional views would be included in the Appendix of this report. They appear in alphabetical order by author.

ADDITIONAL VIEWS OF COMMISSIONERS ELLEN BRAVO, PAMELA EGAN, DONNA LENHOFF, LENORE MILLER, AND U.S. REPRESENTATIVE PATRICIA SCHROEDER

We fully agree with the policy recommendations passed by the Commission without dissent and presented in the body of this report. Our thanks to our fellow Commissioners and the staffs of the Commission and the Women's Bureau at the Department of Labor, without whom this report would not have been possible.

At the same time, we believe that the FMLA has been such a success; that the ability to meet work obligations *and* family responsibilities is so important to workers, families, and communities; and that businesses can so easily be *both* family friendly and competitive — that FMLA protections must be expanded to reach even more workers. To that end, we offer the following additional views.

As the full Commission's report details, the Family and Medical Leave Act has been a significant first step in achieving job protection and maintenance of health benefits for eligible workers who must take time off work in order to fulfill certain family responsibilities or cope with their own serious health condition. As the report also details, the FMLA has achieved these goals without overburdening FMLA-covered employers. In fact, the Commission's Employer Survey shows that, by their own reports, most covered employers have found zero to minimal cost increases associated with FMLA compliance, and most have seen only slight to moderate increases in administrative burdens.

Given the well-financed lobbying effort mounted against federal family and medical leave protection and the resulting delay in enactment of federal FMLA protections, the workers, unions, community advocates, and elected officials who worked so hard for passage of the FMLA deserve hearty congratulations for this achievement.

In addition to examining whether the FMLA achieved its specific goals of job protection and maintenance of health benefits for covered eligible workers without undue burden on their employers, the Commission on Leave was also asked to examine the whole fabric of the country's family and medical leave policies and lack thereof.

Approximately half of the workers in the United States (or about 45 percent according to the Commission's employee survey) are not protected by the Family and Medical Leave Act at all because they work for "small" employers. And 11-13 percent of workers who are covered by the FMLA are not eligible for FMLA protection at a given point in time because they do not meet the one year and/or 1,250 hour thresholds. There are also significant differences among ethnic groups in likelihood of coverage and eligibility under FMLA with Latino workers being the least likely to be protected. In fact, the Commission's research shows that workers who are most likely to be ineligible for FMLA protection, even though they work for a covered employer, are women, younger workers, workers with low family incomes, and those workers not protected by a collective bargaining agreement.

Of those workers who are both covered and eligible for FMLA protection, many needed time off work for family or medical reasons but did not take it. According to Commission research, 50 percent of those people had to forego caring for a seriously ill family member or their own newborn child. In other cases, workers could not take time off work *even for their own serious health condition*. In other cases, workers cut their leave short. Why? The Commission's research clearly shows that the major barrier to workers' taking time off to take care of family responsibilities or their own serious health condition is an economic one. Too many workers simply cannot afford to take time off without wage replacement.

Of course, even those workers who are covered by the FMLA still lack protection for those times when their family responsibilities fall outside the confines of "qualifying events" outlined in the Act. The worker whose brother is seriously ill or the worker whose six-year old must stay home from school sick, but is not considered to have a "serious health condition," are dealing with family responsibilities which are not covered by the FMLA. And, appallingly, workers whose injury or illness occurred *on the job* often have no job protection under existing workers' compensation systems once their 12 weeks of FMLA protection run out.

It is in looking at these broader questions of family and medical leave that one begins to see significant gaps in the protection available to American workers and their families. Clearly, the most serious of those gaps fall generally under the categories of coverage, eligibility, affordability, and leave-qualifying events.

To help close these and other gaps, we offer the following policy recommendations:

Coverage:

Amend the FMLA to lower the threshold of coverage to include employers with 15 or more employees making the FMLA consistent with other major employment laws such as the Americans with Disabilities Act and Title VII of the Civil Rights Act of 1964.

Eligibility:

Amend the FMLA to lower the one-year eligibility threshold to 26 weeks.
Eliminate the 1,250-hour eligibility threshold.

Affordability:

While we concur in the full Commission's recommendations encouraging the development of voluntary systems of wage replacement, we believe that *voluntary* systems are unlikely to achieve access to wage replacement for the vast majority of workers. In fact, the Commission's research on family and medical leave policies in existence before passage of the FMLA demonstrates that voluntary workplace policies in this area were both inconsistent and inadequate. Given the importance of wage replacement to workers' ability to use FMLA leave, we recommend that Congress, as well as the states, develop a uniform system of wage replacement available to all employees based on one of the wage replacement systems outlined in the Commission's recommendations, i.e.:

(1) the expansion of unemployment insurance eligibility criteria to include compensation during periods of FMLA-covered absences, or

(2) the expansion of existing temporary disability insurance (TDI) systems and establishment of new TDI systems covering periods of FMLA-protected absences.

Leave-Qualifying Event:

Expand leave-qualifying events to include the serious health condition of siblings, domestic partners, parents-in-law, and grandparents.

Duration of Leave:

Extend job protection and health premium coverage in the case of employee's own serious health condition resulting from occupational illness or injury to one year.

Definition of Serious Health Condition:

Amend Department of Labor regulations to eliminate the requirement that a serious health condition last more than three days.

Substitution of Paid Leave:

Amend FMLA to allow workers, not employers, to choose whether paid leave will be substituted for periods of unpaid FMLA leave.

Clarify that the FMLA allows for the substitution of sick leave in all cases of the serious health condition of an employee's family member and amend it to make such substitution available in all cases of birth, adoption or placement for foster care of a child.

Protect AFDC Recipients:

Protect recipients of Aid to Families With Dependent Children against loss of AFDC eligibility and benefits when such recipients are required by state and federal law to work outside the home but are unable to work due to an FMLA-qualifying event. Such protection should be available to AFDC recipients regardless of whether they are otherwise eligible or their employer is covered by the FMLA.

Protection for Unemployed Workers:

Issue Department of Labor guidance to state unemployment compensation insurance programs to the effect that, when an employee loses her or his job because the employer denies leave or refuses reinstatement in violation of the FMLA, the employee should not be disqualified from eligibility for unemployment insurance benefits.

Compliance Incentives:

Allow compensatory and punitive damage judgements in cases of FMLA violations to strengthen incentives for compliance.

More Generous State Policies:

Clarify that ERISA does not preempt state family and medical leave laws that are more generous as to health insurance coverage than the federal FMLA (for example, the District of Columbia and New Jersey, which require employers of fewer than 50 employees to continue health insurance coverage during periods of leave).

Strengthen Enforcement:

Increase the budget allocated to the Department of Labor for FMLA enforcement.

* * * * *

The reality for most families today is that all adults in the household must work in order to pay the bills. American families are working more and more hours just to stay even. If these families are to achieve a workable balance between their economic needs and their family responsibilities, family and medical leave policies must include wage replacement, must protect workers regardless of the size of their employer, must be available sooner after employment begins, and must be expanded to cover more of the needs of working families.

The United States should be a world leader in such initiatives; we should not trail behind the rest of the industrial world. Our fellow industrialized nations have addressed the health and family needs of working people and still manage to compete in the global economy. The United States can and should do so, too.

ADDITIONAL VIEWS OF ELLEN BRAVO, COMMISSIONER

9to5, National Association of Working Women is proud to join with our colleagues on the Commission in contributing additional views on ways to strengthen the Family and Medical Leave Act (FMLA).

The studies conducted for the Commission and the testimony at the hearings echo the experience of 9to5's members and the women who call our toll free hotline. The good news is that family-friendly policies are a win/win situation for employers and for working families. The FMLA has allowed many workers to care for a family member and stay employed — and insured. If a workable balance is desirable, however, that balance must exist for all families, regardless of what they earn, where they work or how family members are related.

Of the many statistics that emerged in this report, one particularly deserves notice. **More than one out of every five workers with family income under $20,000 use public assistance to support themselves while on leave**. We need to make it possible for working parents to care for a family member without having to go on welfare to do so. We also need to make it possible for those leaving welfare to stay employed. Congress is about to enact sweeping changes in welfare requiring women on AFDC to enter the workforce, where by definition they will be ineligible for FMLA coverage for at least a year; many will continue to be left out simply because they'll be working for a company with fewer than 50 employees. It would be self-defeating to move women from welfare to work only to have them be fired or have to return to assistance because they need to take some time to care for a sick child.

It's time to make a good measure better. We must make family and medical leave accessible and affordable to those currently excluded.

ADDITIONAL VIEWS OF U.S. SENATOR LARRY E. CRAIG, COMMISSIONER

There is one item on which all members of the Commission on Leave agree: In view of changes in world markets, the American labor force, and the American family, greater "family-friendly" practices in the work place are good for employers, employees, and families. Disagreement among Commissioners comes from differing views on the appropriate role of the federal government.

This disagreement mirrors — is actually an extension of — the debate that preceded, for about eight years, enactment of the Family and Medical Leave Act (FMLA) of 1993.

With creation of the Commission, Congress did something that is fairly novel for Congress to do: It required an examination of, and report on, the actual, real-world impact of a law it passed.

Everyone on the Commission is, and everyone should be, a friend of such examination, when it is objective. Also, even those of us who proposed alternatives to the FMLA when it was considered in Congress, recognize which bill became law and agree that our laws should be carried out fairly, efficiently, and effectively.

This report includes much objective reporting of empirical data, and the report is at its best in these areas.

The report contains a number of findings, conclusions, and recommendations that do not represent the opinion of any one of the twelve voting Commissioners. But it accurately reflects the fact that, with regard to these items, there was no one perspective shared by the entire Commission — or, indeed, even a majority.

I felt it was important to emphasize, clarify, support, or express concern about several particular areas.

Results of the Employer and Employee Surveys, In General.

The Commission was responsible for undertaking some very valuable research, including valuable "first-ever" surveys.

It is not at all surprising that the hallmark finding was that the FMLA seems not to have had a major impact, for good or ill. This is not surprising for four reasons.

(1) Many employers previously provided comparable or more generous benefits. This includes many who did not report having a "formal" policy, but responded to employee needs on a case-by-case basis or a negotiated basis. Overall costs and benefits may not have changed so much as policies became more formalized, more uniform, and less flexible.

For example, my Washington, DC, office was among the first on Capitol Hill to experience an employee leave-taking under the FMLA. The policy we previously had in place was more generous than the FMLA mandate. The only differences caused by applying the FMLA were more paperwork for employer and employee, and more inconvenience to the employee.

(2) The sector that would be expected to suffer the most negative impact of the act was wisely excluded by Congress from its coverage: Small businesses with fewer than 50 employees. Small employers are more likely to know their employees personally and understand the unique and special circumstances in which employer and employee both can find themselves. They are more likely to strive for and require flexibility in helping employees to balance work and family responsibilities.

When Congress enacted the FMLA, it explicitly recognized that small businesses do not have the economies of scale and the capacity to absorb regulatory overhead that larger firms might. The "under-50 exemption" is an explicit admission that such a law **does** create at least some burdens, and that these are disproportionately more difficult for small businesses to bear.

Therefore, it is no surprise that surveys for this report found a fear of increased cost, administrative, and performance burdens among small, uncovered employers significantly greater than what the Commission's surveys managed to uncover among larger employers.

(3) The scope of the FMLA is relatively modest. This is especially true in the version finally enacted into law, which was more limited than earlier versions. The FMLA mandates the availability of a limited array of benefits. Indeed, if opponents of the FMLA had thought that it would be the end, rather than the beginning, of the mandated-benefits agenda, it would not have taken eight years to enact it.

Even ardent opponents of the legislation were more concerned with the temptation politicians would have to take the country down a slippery slope to more and more mandated benefits, selling them as a "free lunch." The concern was — and remains — that the federal government could grow to become every employer's personnel manager, to the detriment of employee choice, job-creation, and competitiveness.

(4) Experience with the FMLA is still very new. There is evidence that some employees do not know the benefit is available. Also, additional costs and complications may not yet have been fully realized by employers. The data in the Commission's research, as excellent as it is, leaves gaps. These facts have helped make the entire Commission comfortable in endorsing future, additional research.

For example: Depending on the category reported, between 0.2 percent and 7.2 percent of employers surveyed experienced negative effects from the FMLA on several kinds of business or employee performance. However, the Commission and its staff did not have the resources to determine how much overlap there was between employers reporting, for example, loss of productivity and those experiencing increased absenteeism. The **total** number of employers experiencing negative impacts **may** have been anywhere from 7.2 percent to almost 27 percent.

Similarly, there was no qualitative assessment of, nor a sufficient method of assigning weights to, the different costs and benefits reported. Does impaired business growth outweigh reduced turnover or vice-versa?

We know, not surprisingly, that no **one** beneficial or detrimental effect occurred to a serious degree for a large number of employers. Similarly, we know that some modest number of employees now have access, under the FMLA, to benefits that they did not previously enjoy. And we know that a significant number of employers have changed or adopted **formal** policies in this area. But it is simply too soon to draw much in the way in of conclusions.

These comments in no way diminish the distinguished work performed by the Commission's staff and the organizations that gathered survey data. What the data do show is the difficulty in assessing the impact of a single national policy on the wide diversity of American workplaces, when that policy, however limited, is involved with an almost infinite number of individual circumstances, trade-offs, and intangibles. That fact, in turn, suggests something about the efficacy and wisdom of the federal government treading into such realms in the first place.

Government by Anecdote Remains Dangerous.

One disappointing feature of this report is the number and type of anecdotes about the FMLA's impact on employees.

In part, this reflects the limitations, mentioned just above, on trying to research FMLA's effects.

Quantitative data that is workplace-centered and concerns larger numbers of employees is easier to come by through employer surveys — after all, one personnel director can answer questions about dozens, even hundreds, of employees. Information on the impact on families and employees as individuals is more difficult and more costly to obtain through standardized surveys. Anecdotal material, however limiting, at least provides illustrations of personal experiences with the FMLA.

In part, the nature of these anecdotes is a product of the charge given the Commission. The Commission was supposed to review the impact of the FMLA on employees. Employees and families who have taken FMLA leave are identifiable and feel they can point to identifiable benefits they have received. Thus, a pattern emerges that, intentional or not, resembles endorsement and cheerleading.

Conversely, it is more difficult to find a wealth of anecdotal information on negative effects on employers or employees. The employee not hired because of impaired company performance is almost always impossible to locate and interview. The raises not given because of increased benefit costs are seldom identifiable, even to the employer. The other human resource needs unmet because of the time consumed by paperwork rarely show up to testify at a hearing.

In any event, as much as an anecdote may tug at the heartstrings, government by anecdote is a dangerous thing. Trying to mandate relief for a condition with a sympathetic human face often involves trade-offs that are harder to identify on a personal level, but that actually impose more suffering than they alleviate.

The more a so-called benefit is embodied in a one-size-fits-all mandate from a distant government in Washington, DC, the greater the risk that real people in real workplaces will have less and less freedom to do what is best for their families, coworkers, employers, and employees, given their unique, individual, and local circumstances.

More experience with the FMLA and additional study of that experience will begin to produce more quantitative data on the employee side (as well as the employer side), and more anecdotes on the employer side. It is possible — indeed I hope — that this future research shows the benefits of FMLA outweigh its costs — for employees **and** employers. I do not expect that to be the case, which is why I (and many others, including several of my fellow Commissioners) advocated alternative approaches to achieve many of the same goals as the FMLA.

Future Directions — Research.

It is easiest, in additional views, to focus on differences of opinion or concerns with the body of the Commission's report.

There is, I believe, unanimous agreement that increased public education is a good thing.

So, too, without a doubt, is the idea of developing model record-keeping systems so that employers and employees can proceed with greater certainty and less inconvenience when an FMLA leave-taking instance arises.

Coordination among federal agencies has the potential to increase awareness. Improved awareness will improve compliance. The Commission's report should not be construed to suggest that other agencies police FMLA compliance and add to the complex, often-contradictory mass of regulation already facing American employers.

Of particular interest would be additional research on how Congress effects, and is affected by, application of the FMLA. It is the ultimate of arrogance for those who write the laws to declare themselves above those laws. Beginning with passage of the FMLA in 1993, and accelerating with the Congressional Accountability Act of 1995, an historic commitment has begun to require Senators and Representatives to live and work under the same laws as everyone else.

Earlier in my views, I commented briefly on my Senate office's experience as an "FMLA pioneer." In fact, my office participated in the original Senate task force that worked on exactly how to implement the FMLA in the Senate. I will address this same area again, later, in comments on legislative proposals.

Overall, I want to caution those who may read the Commission's call for further research as the promise of endless federal employment or government grant money to conduct this study. Universal agreement that the federal government should be on-course toward a balanced budget means several years of stern prioritizing. Research that cannot be piggy-backed, easily and virtually without additional cost, onto other, ongoing data collection (for example, Census surveys), will have to be conducted by non-federal researchers.

That's good news. The private sector, foundations, and schools will have a great, fresh diversity of ideas and perspectives. The Commission has now produced a good, first body of data that would yield much to other researchers with the patience to plow through it, and the creativity to be inspired to proceed in new directions.

Future Directions — Wage Replacement / Paid Leave.

This is the most controversial area discussed by the Commission and its report, reflected by the strongly worded statement of no recommendation for or against paid leave. The only statement that would have produced greater disagreement would have been a statement making **any** recommendation, for or against. Every Commissioner has a strongly held view here. The lack of recommendation indicates no lack of passion on the issue, but rather a lack of agreement in the Commission.

It is important to make clear exactly what the Commission **did** state in this regard.

Two statements are intuitive and obvious: Employers, especially small employers, who do not currently provide paid FMLA leave, fear the additional costs that would result; and when an employee takes unpaid time off from work, a financial sacrifice results. Both are statements of legitimate concern; neither is sufficient, alone, to begin to suggest a policy recommendation.

However, paid leave certainly would entail different, much more serious trade-offs than the current FMLA. The results of the Commission's research are certainly too tentative, given the very new experience we have with the FMLA, to support moving from the status quo toward paid leave.

The area of agreement within the commission is best demonstrated by the use of the word "voluntarily" three times, and the word "negotiating" once, within the recommendations on paid leave. I don't think anyone disagrees with the proposition that, when an employer can afford to provide paid leave, it's good to do so. Similarly, I don't think anyone disagrees with the idea that the laboratories of the States are appropriate venues for considering policies appropriate to the unique economy and circumstances of each State.

The Commission's text in this section of the report was carefully chosen. Consideration of a "uniform system" of paid leave may mean uniformity within the policies of a single employer.

Suggesting consideration of a variety of ideas in multiple forums is **not** a recommendation for a national, one-size-fits-all mandate. It should not be construed or represented as such. At the same time, no one should be afraid of the robust exchange of ideas and opinions. I am comfortable saying that debate should be stimulated, and saying, in that debate, that flirting with any new, national policy is premature.

Future Directions — Other Legislation.

I am not advocating any legislative activity in the area of family and medical leave benefits at this time. Employers and employees have hardly had a chance to let enactment of the FMLA sink in. But, should Congressional attention turn back to this area in the future, several ideas are readily available as partial substitutes for the current law and/or alternatives preferable to its expansion.

Threshold Changes. I welcome future research on the impact of FMLA-type policies by size of employer. If small, covered employers prove to have more in common with under-50-employee firms than with larger firms, that would argue in favor of raising the threshold for FMLA coverage in the future. Congress may also want to consider some other size standard. In some industries, a firm with 200 employees is, in every real sense, a small business.

Congressional Pilot Program. Restrictive procedures in the House of Representatives stifled many creative amendments to the FMLA. One would have required that the FMLA not take effect until Congress had two full years complying with its terms first. Since that time, the "Congressional Accountability" movement has gained ground and scored solid successes — most particularly in the 104th Congress. However, this "pilot principle" would be appropriate to apply to **any** mandated benefit that might be proposed for imposition on the private sector in the future, including any expansions of the FMLA.

Tax Incentives — The Carrot Instead of the Stick. During the 102nd Congress, President Bush announced his support for creation of a Family Leave Tax Credit as an alternative. This actually was based on a proposal made years earlier by, among others, then-Representative Dan Coats and myself. I offered such a tax credit as the Craig-Dole substitute during the 1992 and 1993 debates on the FMLA. Our bill, unlike the FMLA, would have been available to employers of all sizes. Rather than an unfunded mandate, our tax credit would have provided a win-win financial incentive — employers who felt they could not afford to provide family leave benefits would have been able to do so.

Preferred Rehire. In the 101st Congress, Representative Charlie Stenholm and Senator Orrin Hatch offered a creative alternative to the FMLA, based on the rehire preference extended to our nation's Veterans returning from wars. Their proposal, the "American Family Protection Act," was a "first-in-line" preference, not a mandated benefit. The employer who could not immediately offer the returning employee his or her old job would not have been forced to damage the company to do so, as is possible under the FMLA. There would have been greater flexibility for employer, employee, and family. Unlike the FMLA, their bill would have covered 100 percent of employees for a much longer period of time.

Acknowledgements.

It is a tribute both to opponents of earlier, more one-sided, versions of the FMLA, and to Senator Dodd, the Senate sponsor of the law enacted in 1993, that the ultimate version created a commission with a limited mission, primarily for empirical research, and had an evenly divided membership, in an attempt to avoid partisan predetermination of the Commission's findings or recommendations.

Senator Dodd became Chairman of the Commission and I congratulate him on the completion of the two-year odyssey represented by this report.

All the Commissioners were constructive about seeking agreement when it could be achieved and principled in any disagreements. I enjoyed serving with my fellow-Commissioners and commend them for their dedication.

Ann Bookman, the Commission's Executive Director in the difficult, concluding phase of bringing all the preceding work together, has been professional, hard-working, and responsive, as has been her staff.

I also want to acknowledge and thank Commissioner Mary Tavenner, Suzanne Day of Senator Dodd's staff, and Commission Vice Chair Donna Lenhoff, who worked with my office on the "technical task force" set up to help propose and review the research conducted for the Commission, and later, painstakingly to review initial drafts of this report. During most of 1995, my office was represented on the technical task force by Legislative Fellow Roy Fairchild, whose own management experience and attention to detail were invaluable to me and to the Commission.

All the Commission's ex-officio members, as well as the staff reporting to the Commission, were drawn from an administration that considered its first major legislative victory to be passage of the FMLA. This might reasonably be expected to frame the perspective with which work was undertaken for the Commission. Such concerns would be expected, from those on one side of the issue or the other, no matter which Administration was in office. The fact that there was much agreement on the Commission's final report is a tribute to the efforts at fairness and balance on the part of all the Commissioners, staff, and researchers.

ADDITIONAL VIEWS OF LELAND B. CROSS, JR., COMMISSIONER

I have been honored by being named a Commissioner on the Commission on Leave. I cannot recall working with brighter and more dedicated persons, including my fellow Commissioners and our very excellent Executive Directors and their staffs. The nature of the Commissioners' final vote on our Recommendations to Congress is such that I cannot in good conscience go behind that vote in any sense and will not do so.

I do have some observations and concerns which I have expressed to Commissioners at the time of the above vote which I will state again for the record:

1. Plainly, the FMLA is a very valuable piece of social legislation which needs to be much better publicized than it has been to date for further utilization.

2. Clearly, additional research should be done along the lines suggested in the Recommendations as the legislation is better publicized and more broadly used.

3. Any effort to contemplate the measures suggested in the Recommendations for engaging in steps toward consideration of wage replacement should be only on a basis which fully recognizes that there are a great many employers who reasonably believe they cannot afford such additional expense for a variety of economic reasons which may surely mean uniformity is not an attainable goal. Of course, there are employees who do not take unpaid leaves because they cannot afford to do so. This is a simple fact of life. Of course, those employees that do take such leaves may well suffer financial hardship when they take an unpaid leave. This, too, is a simple fact of life. These factors, alone, do not justify leaves provided under the Act becoming paid in whole or in part in the interest of uniformity or justice.

   One need only look to Europe and its ever-increasing social welfare benefit legislation for employees, its rapid growth of labor costs and its resulting explosion in unemployment. In Europe we have seen a sharp increase in temporary workers and a steadily increasing underground economy as a result of such social welfare legislation. The very same signs are already beginning to appear here in the U.S. The result of such social welfare legislation in Europe has been well stated by Gary S. Becker, 1992 Nobel Laureate who teaches at the University of Chicago, as follows:

   > "... When labor is expensive, companies replace departing workers only slowly — and are reluctant to expand even when the economy picks up. This is why it now takes much

longer than it did a decade ago to find a job in Europe if you are a first-time job seeker, a mother returning to work after childbirth, or an immigrant. It also explains why the youth unemployment rate is so high and why those out of work for over a year have grown to more than one-third of the unemployed. During the past two decades, private employment in the European Community has barely increased: The public sector has accounted for almost all growth in employment. Japan and the U.S. have had the opposite experience: Private employment has surged, while government employment has grown little.

"The long term unemployed, youths, temporary employees, and underground workers — none of these groups have any opportunity to invest in job skills and training. The sharp growth in these categories means that fewer workers are being trained to work in modern economies, which demand high levels of skill and knowledge. The inadequate training that workers receive makes it still harder for them to find satisfactory long-term jobs.

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"The European experience should be a lesson to the U.S. and other countries: Employment is much more buoyant when governments interfere less in labor market affairs. Let's hope that this lesson doesn't have to be learned the hard way — through higher unemployment."

[Business Week, October 4, 1993]

Our legislative rush to replicate the European experience might well be tempered by the results noted above by Becker.

4. Obviously, employers should take the necessary steps to insure greater family- friendly policies. It is not merely the right thing to do, but the smart thing to do to attract and keep the best employees.

5. Finally, the federal government should lead by example and become a "family- friendly" employer.

ADDITIONAL VIEWS OF U.S. REPRESENTATIVE STEVE GUNDERSON, COMMISSIONER

I commend Chairman Dodd, the Commission Members, and the staff for their diligence and commitment to meeting the Commission's Congressional mandate set forth in the Family and Medical Leave Act. These Additional Views notwithstanding, I believe this report reflects a job well done, and I expect much of the information included here will prove valuable as employees, employers and policy-makers evaluate the Family and Medical Leave Act in the future.

I submit these Additional Views in order to present my concerns with the Commission's final report. Specifically, I am concerned that the Commission, in Section VI relating to the Impact on Employers and in the Section relating to Recommendations, may have omitted some important information and may have made some overly broad suggestions and in some cases, overstepped the bounds of its mandate. I am writing to call attention to these issues.

Assessing the Impact of Family and Medical Leave Policies on Employers

In Chapter VI of its final report, the Commission presents information "to assess the impact of family and medical leave policies in general, and of the FMLA in particular, on employers." I am concerned that the Commission has presented incomplete information here and, in doing so, may have colored its assessment in a way that does not adequately acknowledge employers' problems in complying with the FMLA.

The Commission begins its discussion by indicating that testimony from various employer representatives confirmed that the majority of employers found administration of the FMLA to be "easy" or "somewhat easy." The Commission then supports this finding by highlighting testimony from one industry witness whose company has found the administrative burdens of the FMLA "very minimal." The Commission failed to acknowledge, however, the testimony of another hearing witness, Ms. Libby Sartain, Vice President for People, Southwest Airlines, who noted that:

> It is almost impossible to insure that the FMLA is consistently applied because it is so complicated. We are a large company with many different departments and locations. One third of our people spend their time in the air. To guarantee that we were maintaining a consistent practice throughout the company we would have to hire and train an FMLA administrator for each location. But we don't have human resources people at each site. So a support level person is often saddled with trying to make sense of the law. Even though we have trained all of our managers, supervisors, and coordinators on the law, they are bound to make mistakes in administering it because it is so complicated.

In addition, the Commission included ample testimony in that section of its report relating to the benefits employers have experienced in connection with the FMLA, including excerpts from seven different witnesses, each extolling the Act's virtues. Conversely, when discussing the costs of the FMLA to employers, the Commission mentioned only one witness, and then, excluded a significant part of her testimony on the costs of the Act to her company.

Finally, the Commission concludes its discussion on the FMLA's effect on employers by stating that much of the difficulty employers have experienced in complying with the Act - particularly larger employers - is "probably due in part to start up costs involved in the implementation of the FMLA." The Commission offers little factual information or data to substantiate this conclusion and hypothesizes that these problems "may diminish over time." I am concerned that the Commission has paid too little attention to the newness of the Act, while encouraging an interpretation that is not supported by the record. Compliance problems may be due to start up costs, but they may also result from the changes required in an employer's administrative and personnel practices. In short, any conclusion is premature until employers and employees have had more time to fully understand and "adapt" to their rights and responsibilities under the FMLA.

In conclusion, I am concerned that the Commission may have approached this part of its final report already having concluded that the FMLA is working well for everyone, and highlighted that information which supports its conclusion. This certainly does not comport with my review of the hearing testimony or the available anecdotal information. The fact is that federally-mandated family leave imposes additional burdens on employers of all sizes. To ignore that fact or to suggest otherwise is simply not accurate. At a minimum, I believe the Commission should have underscored the fact that the FMLA is, by all accounts, still in its infancy, and that employer reactions to the Act have been mixed. Moreover, I would have preferred that the Commission had placed a greater emphasis on the notion that further research will be necessary before we can fully assess the true impact of the FMLA or draw any firm conclusion regarding its costs or benefits to employers.

Wage Replacement

In its Recommendations section, I am most concerned about the way the Commission handles the issue of wage replacement. Specifically, I am concerned that by asserting that "the development of a uniform system of wage replacement . . . be given serious consideration . . ." the Commission is opening the door to a debate on federally mandated paid leave, a debate which is premature according to the information collected by the Commission and the statutory mandate.

In its recommendations on Wage Replacement, the Commission accurately reports that many employers already provide some form of paid leave to their employees, "indicating both their recognition of their employees' need and their own ability to provide paid leave..." The Commission also accurately reports, however, that "many employers — especially small employers — fear the additional costs that paid leave programs are likely to impose on their businesses."

The Commission then attempts to take the middle road on the issue of paid leave by stating that "the Commission makes no recommendation for or against federally mandated paid leave." I find this statement, in and of itself, somewhat troubling. Rather than attempting to remain neutral on the issue of paid leave, I believe the Commission would have been wholly justified — based on testimony received during the Commission hearings — in including an affirmative statement rejecting federally-mandated paid leave as premature and potentially harmful to employees and employers alike, especially when we have not yet gauged the full effects of existing law.

More troubling, however, is the fact that after attempting to remain neutral on the issue of paid leave, the Commission then goes on to recommend "that the development of a uniform system of wage replacement for periods of family and medical leave be given serious consideration by employers, employee representatives, and others." My primary concern is that by suggesting a "uniform system" of wage replacement, the Commission raises the same "one-size-fits-all" questions that made enactment of the FMLA so difficult in the first place. The diversity of today's American workplace simply doesn't lend itself to this kind of federal micro-management.

It is my belief that employers, employees and their representatives are already giving "serious consideration" to the issue of wage replacement, just as they would to any other matter affecting employees' compensation or benefits. They are doing so without any prompting from the federal government. My fear is that by making specific recommendations in this area, the Commission is abandoning its own neutrality on the issue of paid leave and prompting a debate that is simply not necessary at this point on the federal level.

I would also like to comment on another aspect of the Commission's recommendations concerning Policy Directions. Specifically, the Commission recommends "that other federal agencies (in addition to the Labor Department) identify steps they can take to ensure full compliance with FMLA by companies with which they work." I am unclear as to the intended meaning of this recommendation. For example, is the Commission recommending that when a company appears before the Environmental Protection Agency (EPA) in connection with its potential Superfund liability, the EPA should also become involved with that company's compliance with the FMLA? What about the brokerage company that appears before the Securities Exchange Commission concerning possible insider-trading violations?

The statute designates the U.S. Department of Labor as the federal agency responsible for the implementation, administration and enforcement of the FMLA. Given the limited resources available to all federal agencies for meeting their respective statutory obligations, I see no compelling reason — nor statutory authority — for recommending that agencies other than the Department of Labor be involved with the enforcement of the FMLA.

Additional FMLA Education

In the section of its recommendations entitled Public Education and Technical Assistance, the Commission includes a broad recommendation that "the Labor Department do more to educate employees, employers and the public in general about the FMLA . . ." As a general recommendation, I fully agree with Commission on this point. I believe the information the Commission collected, through its hearings and survey research, clearly shows that employees and employers alike are not yet fully aware of their rights or responsibilities under the FMLA. Clearly, further education is needed.

The Commission goes on, however, to articulate a number of specific ways in which the Department should fulfill this particular recommendation. I am more concerned by the specific suggestion that the Department conduct "special campaigns to educate doctors, social workers and other health professionals on their roles in the FMLA and how they can help their clients use it . . ." Frankly, I am puzzled by the need to direct Departmental resources, beyond those it would spend on other educational programs, to assist social workers and others help their "clients" understand their benefits under the FMLA. A campaign of this nature strikes me, at best, as somewhat redundant and, at worst, as borderline advocacy. The final regulations that implement the FMLA have been promulgated for less than one year. Thus, we should concentrate our resources more toward educating employers and employees so that the benefits provided by the FMLA are implemented correctly.

I am also intrigued by the Commission's attention to the so-called "cultural barriers" that may be preventing employees from taking family or medical leave. The Commission makes reference to these barriers in several instances, including one education-related recommendation that federal agencies create a "national business/employee Round Table to address corporate and cultural barriers" that prevent employees from taking leave; and, another relating to future research that would examine approaches employers can take "to reduce the cultural barriers to taking leave . . ."

It is unclear to me exactly what the Commission is trying to address with these recommendations. If, by "cultural barriers" the Commission is referring to language problems experienced by immigrant workers who are new to the American workplace, then efforts to address those problems may be worthwhile. Likewise, educating employers about their responsibilities to employees under the law is desirable. If, however, the Commission is suggesting that the federal government expend scarce federal resources to explore the socioeconomic factors affecting employees in the workplace, then I must take exception. I am simply not convinced that this is an appropriate role for the federal government.

Future Research

With regard to its recommendations on Directions for Future Research, I would note that the Commission has made a number of useful suggestions. I concur that much of the information this research would provide could prove valuable in making future assessments on the efficacy of the FMLA. I am struck, however, by the broad scope of some of the Commission's recommendations in this area. For example, in one instance, the Commission recommends macroeconomic research on the impact of family leave policies on foreign countries, including consideration of "culture, demographics and medical practices." Other than to perhaps assess the impact of leave policies on our foreign trading partners, or, generally, on our international competitiveness, I am unsure as to what benefit this type of research might provide.

Beyond questions regarding the scope of any future research, I would also make the general suggestion that any future research in this area, especially federally funded research either conducted by the government or on behalf of the government be deferred until employers and employees have had sufficient time to "adapt" to the FMLA. By allowing sufficient implementation time, future studies can measure both employer's technical compliance and the FMLA's long-term effect on cost and productivity, and employee usage, attitudes and morale. It may be several years before we can fully and accurately assess the impact of the FMLA on employees or employers, and I am reluctant to encourage costly research until such time that we are assured of receiving more complete information.

In conclusion, I believe the research conducted under the Commission's direction provides us with a useful start in studying the effects of the FMLA. The federal government established a threshold by passing the Family and Medical Leave Act. As employers and employees learn about their rights and responsibilities under the Act, and the terms in the regulations are defined, there will be need for further study. I believe it is very important that on the federal level, we look carefully at the effects of the current law on all involved parties before expanding coverage.

ADDITIONAL VIEWS OF DONNA R. LENHOFF, COMMISSION VICE CHAIR

I add these words to the comments that I joined with my colleagues. It is very gratifying to me personally, and to the Women's Legal Defense Fund, which led the coalition for enactment of the Family and Medical Leave Act, that family and medical leave has been such an extraordinarily successful policy. In just the three years since its implementation, it has already helped millions of American working families. Costs and burdens on employers have been nonexistent to small; and now that initial implementation is over, some of even those small costs can be expected to decrease.

The Family Leave Commission heard eloquent and poignant testimony from around the country about how family leave helped working families cope with family tragedy. Of course, family leave doesn't prevent tragedies from happening. But it *does* help working families stay together and survive such tragedies. It *does* keep families from losing their livelihoods and their health insurance — even from falling into poverty or turning to welfare — at times when family needs must take precedence over work responsibilities. And it does that without undue cost to business — indeed, often it saves money!

That's why it makes eminent sense for us as a nation to try to ***build upon*** this successful policy. Our challenge is to figure out how to make family and medical leave more available to more employees — those who work for small employers, those who are recently hired, those who work few hours, those who can't afford unpaid leave. America's working families will thank us for it.

Finally, a word of thanks to the people who worked so hard to ensure that this Family Leave Commission would make a significant contribution to our knowledge base — especially to Secretary Robert Reich, who provided the leadership and wonderful staff essential to completing this work, and the people at the Labor Department's Women's Bureau, who *were* that wonderful staff. While I can't name everyone involved, special thanks for devotion above and beyond the call of duty go to Susan King and Ann Bookman.

My colleagues on the Commission have been outstanding in their professionalism and thoughtfulness. It has been a great pleasure to serve with them on this Commission.

And finally, none of this would have been possible without the extraordinary commitment and leadership of the Commission's Chairman, Senator Chris Dodd. For his tireless efforts, wise and considered counsel, personal involvement, and principled caring, America's working families owe an incalculable debt.

ADDITIONAL VIEWS OF SCOTTIE THERESA NEESE,COMMISSIONER

It has been an honor to serve as a Commissioner for the Commission on Family and Medical Leave. I have enjoyed the opportunity to work with fellow Commissioners and congratulate Chairman Christopher Dodd for his commitment to complete the congressional mandate set forth in the Family and Medical Leave Act.

I am submitting these Additional Views from a female small business owners perspective; also as a young working mother and now as a "chronologically mature" working grandmother with a daughter who is now a young working mother. As a small business owner with a permanent and temporary personnel service; I have worked with thousands and thousands of employees and employers over the last twenty-one years and believe I have a solid grasp of workplace issues from both sides of the aisle, so to speak. I also submit these Additional Views as a past president of the National Association of Women Business Owners (NAWBO). NAWBO is not involved with the Commission on Family and Medical Leave and any attempt to perceive any of my views as a NAWBO statement would be incorrect. Yet, because I was national president of NAWBO; I have a full sense of how a large number of women business owners feel and think about caring for their families and their businesses.

My Additional Views have been expressed to fellow Commissioners throughout this process and I will state them again for the record:

PUBLIC EDUCATION AND TECHNICAL ASSISTANCE

A. Increased public education on The Family and Medical Leave Act (FMLA).

The survey research completed for the Commission clearly indicates a lack of understanding of the Family and Medical Leave Act by both the employer and the employee.

I wholeheartedly agree with increasing public education of this Act. From my perspective, it is extremely important that the education comes not from an "advocacy" standpoint; but, an educational and training non-biased position. Therefore, outsourcing this type of education and training would be preferable. Anytime the private-sector can provide a product or service; it can generally be provided at a more reasonable rate. In addition, it seems to me anytime you have the government providing education and training; that education and training inevitably becomes partisan. Finally, we must make sure we are educating and training only those who are eligible to receive the benefits. The employers covered under the FMLA Act need additional training so that the regulations are implemented correctly. And positive private-sector education to those employers not covered will motivate them to move into the 21st Century and protect their employees.

Bottom Line: Providing additional education on the Family and Medical Leave Act is necessary. Let's make sure in the education process that the employer and employee does not learn how to abuse the Act. We also must make sure that the Labor Department does not discriminate against anyone; including targeting "cultural barriers".

DIRECTIONS FOR FUTURE RESEARCH

I concur with much of the future research suggestions offered by the Commission; but offer some additional opportunities.

(A) Additional research should be done to assess the impact of family leave policies voluntarily provided by employers. And further, what are some additional family leave policies that employers have put into practice. For example, telecommuting for employees who have family responsibilities but need to continue to work.

(B) Assessing the impact of family leave policies on countries' and companies' overall economic performance should supply some very interesting facts. Such as Europe. Europe, with an increasing social legislative agenda, has hampered job creativity. Companies are hiring huge numbers of temporary employees because they simply cannot afford to handle the paperwork, pay benefits, match taxes, etc. for employees. These same issues are evolving in the United States. Frankly, since I own a temporary job placement firm, I should really be for this type of social legislation. But I also realize that we must have a free market economy with less government intrusion and government paperwork; or we will not have permanent or temporary jobs at all!

(C) As a personnel service small business owner, I would welcome further research to assess the impact of family leave policies on temporary, part-time, and contract workers. In part, I would speculate you will find the main reason companies are using temporary, part-time, and contract workers is because of the rules and regulations imposed on the backs of businesses by the government. Release these burdens and you will find more and more businesses in a hiring frenzy. A large percentage of companies simply cannot provide every benefit in the world to all employees and remain in business. Because of unnecessary government regulations and mandates: we are experiencing the plight of downsizing or "rightsizing", layoffs and bankruptcies, and businesses closing their doors.

Finally, along these same lines, it is important to note that most of the temporary services providing temporary and part-time workers, provide reasonable benefit packages. These benefit packages include, but are not limited to, paid vacations, education and training packages, certainly unpaid family and medical leave, and health care and life insurance.

(D) Additional research should be conducted on the short and long term costs, productivity and benefits of family and medical leave policies for employers. With the Commissions's hearings and survey research, I don't believe we have begun to touch the cost impact of this policy on employers because it is just too early in the Act to assess these costs, nor have we had an opportunity to assess possible discrimination in hiring practices.

According to WESTAT, an employee-owned research corporation,

"given the relatively short time period since the law was passed, the provisions are still being interpreted by U.S. employers and employees. Consequently, the following limitations on the data should be considered when interpreting the results: (1) employers may have had to estimate quantities (e.g., for a particular work site when records were kept for multiple sites); (2) much of the information collected on the impact of FMLA was collected in ordinal, rather than quantitative, form (e.g., small increase vs. large increase, rather than the exact dollar figures producing quantitative information on how much the costs have increased); and (3) the survey may have only tapped into the early effects of the law. Once the law is in effect for a longer period of time and employers and employees become more familiar with its provisions, the impacts may be different."

Within the next 5 years, we should be able to get a clear view of the costs and benefits of this Act. We also need to look at the costs involved when an employee abuses the system. For example, an employee takes 12 weeks away from work and on the last day of leave decides not to return to work. The employer has a temporary employee working the entire 12 weeks. Then they have to start interviewing for a permanent employee. So, maybe 16 to 18 weeks into this process, the employer finally has a permanent employee. Since the employer had a temporary employee on the company payroll, that temporary employee can now file unemployment on the company; thereby raising the companies unemployment taxes. In Oklahoma, an employee only has to work 15 days to qualify for unemployment. Research and survey study on these topics are extremely important.

And the Institute for Social Research, Survey Research Center at The University of Michigan mentions:

"One limitation that is characteristic of most telephone surveys such as the one described in this report concerns the demographic make-up of the persons missed when only those households with working telephone numbers are contacted. These persons tend to be disproportionately elderly, of lower socioeconomic status and residents of rural areas (for a review, see Groves and Lyberg, 1988). This limitation should be kept in mind when examining the results of this survey. Future research should endeavor to replicate these findings using the most representative sample possible.

A second limitation concerning the respondent coverage of this survey is that the population base from which the sample is derived is comprised of persons aged 18 and older who had been employed at any time at all in the time period between January 1, 1994 and the interview (approximately 18 months). It is possible that some respondents are currently unemployed, a fact which should be kept in mind when comparing estimates derived from these data with estimates derived from other population bases."

POLICY DIRECTIONS

A. More Family Friendly Policies

(1) I have the most problem with the Commission's statement "recommending that the development of a uniform system of wage replacement for periods of family and medical leave be given serious consideration by employers, employee representatives, and others".

As the Commission held hearings, listened to the survey research data, and prepared to finalize their report, the issue of paid family and medical leave was always on the fringes. I began to believe the old axiom "let the government get a foot in the door and they'll open it and enter".

During one of the hearings, the message started becoming very clear. That message being, paid family and medical leave should be strongly considered. For small business owners this message is devastating. Now, obviously I realize this Act only pertains to those businesses who employ more than 50 employees. (By the way, is that why some companies are only employing 49 people?) But when is that number going to change to include smaller businesses? Being concerned about those types of issues, I asked Chairman Christopher Dodd during one of our hearings, if an attempt would soon be made to lower the threshold and require paid leave? Please notice the Chairman's response during the Washington, D.C. hearing held at the Department of Commerce on August 4, 1995.

"I'm going to say to my friend, Terry, down here: I no of no one who has any interest, legislatively, at this juncture of adding pay leave to this but [inaudible]. I would say if we could afford to do it and are able to do it, but there's no movement that I know of. I would oppose it if there were for the obvious reasons, at this point. [inaudible]. But we recognize that would be a burden that could not be absorbed, so I know of no interest at this juncture to move in that direction." (Taken from the transcripts of Bayley Reporting, Inc., including all misspelled words.)

This was certainly great news!

In addition, the FMLA Survey results from the Survey Research Center, University of Michigan had this to say.

- Employee survey cannot measure impact of FMLA law, without a pre-FMLA measure.
- Low salience of the FMLA law among the lay public complicates learning people's experiences with FMLA leaves versus other leaves.
- Many of the demographic groups who tend to work in large firms also tend to have distinctive leave taking patterns 1) when there are differences in leave experiences of those in large, FMLA firms and those in small, nonFMLA firms, it's not clear whether it's a result of the workers, size of firm, or the law, and 2) multivariate controls are crucial to conclusions.
- After accounting for demographic differences, reason and length of leave, those in large, FMLA firms tend to receive partial or full pay (versus no pay) during leaves. This is especially true for those taking leave for their own or a relative's health.

Further data indicates that "most worksites report that the FMLA has no noticeable effect on business performance. Between 86 and 96 percent report no noticeable effect on productivity, profitability and growth. To the extent that employers do report an effect, it is about equally likely be positive or negative on productivity, and more likely to be negative regarding profitability and growth."

Does this mean the FMLA is irrelevant?

(2) The suggestion that states should consider voluntarily extending unemployment compensation qualifications to employees on family and medical leave is simply not doable. That is not what the unemployment compensation system was created to do! Another recommendation is that states should consider voluntarily establishing or expanding existing temporary disability insurance (TDI) programs to provide wage replacement for periods of family and medical leave. This is not feasible. Where will the money come from and who and how will this activity be monitored?

When are we going to realize in this country that the city, county, state and federal government cannot do all and be all to every person in this land? President John Kennedy said it best "Ask not what your country can do for you. Ask what you can do for your country." And we must empower people to take responsibility for their lives; realizing that self-esteem is created through accomplishments.

At any rate, many employers are already providing not only paid family and medical leave but many other benefits. I sincerely believe if the government would protect our shores, deliver the mail (which is questionable), and leave us alone, we would be more productive citizens.

As a small business owner, I go the extra mile to protect my employees' jobs; thereby protecting my business. Right now, I have an employee with breast cancer. My company is struggling without her because she is a key employee. I am holding her job for as long as she wants it (not just 12 weeks). I am paying her a partial salary and even loaning her money. I realize all employers are not that way. But why put additional burdensome paperwork and regulations on me because of a few who do not protect their employees?

If you look at statistics and data survey research, you will find that women business ownership is skyrocketing. Women business owners today employ 35% more employees than the Fortune 500 companies WORLDWIDE! Since this is a fact, in a few short years, most of the businesses will be owned by women and the data also indicates that women manage their businesses differently, and treat their employees differently. Women business owners provide high quality benefits, they nurture their employees and their businesses, and they are educated on the subject of family and medical leave (sandwich generation, etc.).

Bottom line: Soon there will not be a need for this type of burdensome regulation, as women business owners will own the majority of businesses in the United States and will protect and nurture their employees.

(3) The federal government should lead the way by example.

The federal government should be a "family-friendly" employer, but the private-sector should lead the way.

ADDITIONAL VIEWS OF MARY TAVENNER, COMMISSIONER

In any group made up of people with vastly disparate positions on an issue, there must be compromise on both sides in order to arrive at a conclusion. So it was with the deliberations of the Family and Medical Leave Commission.

The Commission's membership was composed of those who were the strongest advocates of the Family and Medical Leave Act and those who where equally adamant in their opposition to the federal mandate contained in the Act. Every decision made by the Commission and its Technical Task Force, of which I was a member, required concessions by both sides.

We worked very hard to produce a report which was as balanced as possible. Certainly, those of us who cared most about employers' concerns were at a distinct disadvantage, given that the Chair and Vice Chair of the Commission are two of the nation's most committed advocates of the FMLA and the Labor Department facilitators of the Commission are Presidential appointees. There were many instances of partisanship, particularly in conjunction with the Commission's hearings, and I have very serious concerns at many points in the process that it would be impossible to produce a report all of the Commissioner's could approve. However, when the Technical Task Force got down to the task of writing survey questions and editing the Report, a spirit of cooperation prevailed. All of us made compromises on almost every sentence of the Recommendations section.

There is a lot to dislike in this report, in its tone, its conclusions and its recommendations. It will no doubt evoke criticism from all of the FMLA stakeholders. However, there are also several positive conclusions reached in this report which respond to the concerns raised by employers. The report provides some good news on employers' response to the changing demands of work and family. While the report acknowledges that employers have been forced to change their benefits policies as a result of the FMLA, sometimes with mixed results, it also notes that the vast majority of employees have access to FMLA and the overwhelming majority of employees who need leave are able to take it. We also validated that many employers provide generous paid leave for employee illness.

That being said, I have some particular concerns about the report, which are as follows:

1) Recommendation A, that special campaigns be instituted to educate doctors, social workers and other health professionals on their role in the FMLA and how they can help their clients use it. The Commission has heard from many corporations and human resources professionals about the abuse of medical leave. Those businesses, particularly those with some of the most generous leave policies in the country, have asserted — both formally and informally — that since enactment of the FMLA, employee medical leave has skyrocketed. This is particularly true for those companies which provides paid leave. Special campaigns to educate health professionals to encourage employees to use medical leave is, in my opinion, not warranted.

2) Recommendation C (3) to create a national business/employee Round Table to address corporate and general cultural barriers that prevent employees from taking leave. None of the Commission's research indicated that there is a problem in this area. Indeed, the overwhelming majority of employees who needed leave were able to take it. Moreover, I strongly believe that it is not the government's role to address "cultural" barriers to leave-taking.

3) Directions for Future Research — Recommendation (D) for additional macroeconomic research to assess the impact of family leave policies on countries' and companies' economic performance. U.S. taxpayers should not be asked to fund research on other countries leave policies. There has been plenty of private research on this area done already. Moreover, one of the basic arguments against this legislation during Congressional consideration was the fear that the U.S. was entering into a policy of "Europeanization" of employee benefits.

4) Policy Directions — Recommendation (B) that other federal agencies identify steps they can take to ensure full compliance with FMLA companies with which they work. This would impose yet another nightmarish federal condition on private contractors and is clearly outside the parameters of the Act's enforcement mechanisms.

5) Wage Replacement Recommendations. I strongly advocated that the Commission clearly state that it makes no recommendations on the issue of paid leave. During negotiations, this statement was modified that the Commission make no recommendations for or against federally-mandated paid leave. I disagree with this statement and strongly believe that we should have made a more concise recommendation against paid leave. I also have serious concerns with regard to the recommendation that the development of a uniform system of wage replacement be given serious consideration, particularly in the area of expansion of temporary disability insurance. State disability programs are already fraught with abuse and should not be expanded for FMLA purposes.

Moreover, we heard from many companies that adopted wage replacement programs prior to FMLA enactment which are now finding those programs to be unaffordable now that employees are using FMLA to protect absences for such ordinary conditions as bronchitis and migraines. Rather than expanding such wage-replacement programs, employers are now more likely to restrict or eliminate them.

In terms of input from industry groups, the Commission did receive testimony from several human resources managers who stated that the Act did impose a myriad of administrative burdens. Additionally, we received communications from industry groups, such as the National Association of Manufacturers and the Society for Human Resource Managers, two organizations with extensive knowledge of the Act and its implications whose members are currently administering the Act within their own organizations. It is important to take serious note of their concerns, something the body of this report fails to do.

The following were the most often-mentioned problems cited by industry groups with regard to administration of the FMLA:

1) **DEFINITION OF CHRONIC ILLNESS:** Section 825, 114 (a)(2)(iii) adds a new provision to the definition of serious illness to include a chronic condition. Under the

interim regulations, serious illness generally required absences of three or more days. Now an absence of one day could qualify as FMLA leave for a chronic condition. The definition of chronic condition is so broad that asthma, migraine headaches, and bad back or other similar occurrences can qualify. Many of those conditions would be expected to be covered by an employer's sick leave policy rather than FMLA leave.

2) **NOTICE REQUIREMENTS:** A complex interplay of regulations make the administration of an employer's FMLA policy difficult. An employee can take FMLA leave in daily — or even hourly — increments if they have a chronic condition. The employee need not indicate and intention to take FMLA leave. Instead, the employer must draw this conclusion based upon information volunteered by the employee.

3) **DECLARING FMLA LEAVE:** The designation of FMLA leave remains the responsibility of the employer. The FMLA requires employees to give employers 30 days notice when leave is foreseeable. But the statute and its legislative history are silent as to the notice requirements for unforeseeable leave. In *Manuel v. West Lake Polymers Corporation*, the court held that to require employees to foresee their need for leave and to expressly invoke the FMLA's protection would significantly burden employees.

However, forcing an employer to designate FMLA is not only time-consuming and uncertain, it also stands in direct contrast with the Americans with Disabilities Act, since it could put a supervisor in the awkward position of questioning employees about their medical-related absences to determine if the absence qualifies under the FMLA. Employees should have the basic responsibility for asking for the kind of leave they think they need.

4) **GOOD ATTENDANCE RECORDS:** Under federal regulations, employees who take FMLA remain eligible for perfect attendance, safety and similar bonuses. While the purpose of the Act is to provide job protection for employees who need to take leave, its consequence should not be to award employees for taking leave. If this rule remains intact, "good attendance" awards will become meaningless since employees who have not missed a day of work all year will be receiving the same awards as employees who have been absent for up to 12 weeks.

5) **FEDERAL PREEMPTION:** Nothing in the FMLA pre-empts any provision of any state or local law that provides greater family or medical leave rights than the rights under FMLA. Because of this "non-preemption" language, the determination of whether state or federal law applies should be examined. Federal preemption would eliminate the confusion that currently exists for multi-state employers.

Finally, I am concerned that the recommendations of the Commission seem to indicate that a need is not being met. The data we received not only does not indicate that, but seems to suggest the opposite. While over 65 percent of employees work for employers who are covered by the FMLA, less than one-fifth of the employee population surveyed actually took advantage of FMLA and only 3.4 percent needed it but didn't take it. Recommending that wage replacement policies be seriously considered to address an assumption that this extremely small group of "leave-needers" did not take the leave because they could not afford to do so is like trying to kill a fly with a jack hammer.

That being said, the Commission's work has produced some solid research which should be re-examined in the years ahead. Our nations's experience with the FMLA is still in its infancy and hopefully we will be able to take another snapshot of its costs and benefits at some point in the future.

Clearly, this report is not perfect. Had any one of us on the Commission been able to write it alone it would have read quite differently. What impact, if any, it will have on future policies remains to be seen. It is critical for those who refer to it now and in the future understand that it is a compromise document.

I am personally very grateful for having had the opportunity to served on this Commission and extend my deep appreciation to my fellow Commissioners and their staff — particularly Suzanne Day of Senator Dodd's staff and Damon Tobias of Senator Craig's staff — for making this one of the more interesting and thought-provoking experiences of my career.

ADDITIONAL VIEWS OF ANN BOOKMAN, EXECUTIVE DIRECTOR, COMMISSION ON LEAVE

It has been a great honor to serve as Executive Director of the Commission on Leave under the leadership of Chairman Christopher Dodd. I have admired for many years the way he championed the Family and Medical Leave Act and the needs of children and working families. The energy and dedication Senator Dodd and Vice Chair Donna Lenhoff brought to the Commission's work has truly been an inspiration and made my job a real pleasure. I also wish to thank the other Commissioners for their active participation and involvement, and in particular the members of the bipartisan Technical Task Force who, despite their differences in point of view, worked closely and collaboratively with each other and with me in crafting this report.

When President Clinton signed the Family and Medical Leave Act into law in 1993, I felt a deep sense of appreciation, both in my professional capacity and as a working mother. The country owes a debt of gratitude to Secretary of Labor Robert B. Reich and Wage and Hour Administrator Maria Echavete for their leadership and swift implementation of the FMLA, ensuring that more working Americans than ever before are being supported in their commitment to both their jobs and their families.

The experience of working with the Commission on Leave has provided me with several new insights. First, I have a deeper appreciation for the concerns of the business community. I have listened carefully to the issues raised by business people from firms of all sizes, and have been encouraged to learn that the problems they have encountered are raised in the context of their support for the Act's overriding goals. I am also encouraged by the findings of the Employer Survey which make clear that - after two years of experience with the new law - a large majority of employers are not incurring significant costs or problems.

Second, I have a renewed appreciation of what the FMLA means to working families: the testimony of leave-takers was always compelling, and in some cases heart wrenching. The stories of these employees and the findings of the Employee Survey provide concrete evidence that we need to remove the barriers that still prevent some workers from using the FMLA. Whether it is a re-examination of the eligibility criteria, or serious consideration of a national system of wage replacement, I hope future commissions and policy makers will ensure that every worker who needs the FMLA has access to its benefits. I believe that a family-friendly workplace, with FMLA as a cornerstone policy, will prove essential to American business and American families in the 21st century.

ADDITIONAL VIEWS OF IRASEMA GARZA, SECRETARY, U.S. NATIONAL ADMINISTRATIVE OFFICE, FORMER EXECUTIVE DIRECTOR, COMMISSION ON LEAVE

I am pleased that the Commission on Leave has completed its important mission of studying and issuing a report to Congress on the effects of the Family Medical Leave Act of 1993 (FMLA).

I believe that FMLA is one of the most important pieces of legislation that Congress has enacted in recent history. The enactment of FMLA is a formal recognition by our government that employees are entitled to basic employment protection when required to temporarily leave their employment because of a personal or family illness.

It was a pleasure for me to have served as the first Executive Director of the Commission on Leave. With the support of Secretary of Labor Robert Reich and the leadership and assistance of the Women's Bureau at the Department of Labor, I was able to assist the Commission in establishing the foundation for the commencement of its important work. I am pleased to have identified some existing data sources both within the federal government and in other non-government institutions, to have collaborated with other government agencies engaged in related research, and use these resources to assist the Commission in the development of its workplan.

It was an honor for me to have worked with Senator Dodd and the other distinguished members of the Commission on Leave.

ADDITIONAL VIEWS OF SUSAN ROBINSON KING, ASSISTANT SECRETARY OF LABOR

The Honorable Christopher J. Dodd
United States Senate
Washington, D.C. 20510

Dear Senator Dodd:

The Family and Medical Leave Act helps American families work better. Workers know it. Some bosses know it. I learned this valuable lesson from both workers and bosses during my short tenure while Executive Director of the Family and Medical Leave Commission.

It was a ten month experience that convinced me of the power of the Act and the importance of government service. I want to thank you Senator Dodd and the Commissioners for that experience, as well as citizens who gave their time to create this public record.

As the Executive Director during the period where Congress generously funded the Commission's work, I carried out the mandate from the Commission to hold nation-wide hearings that would supplement the professional research project demanded by Congress.

We heard from workers and bosses, large corporations and small business owners. We heard stories that were moving, sometimes sad, often very funny, always relevant. I knew from personal experience the power this law could make in one's life. I took advantage of the adoption provisions of DC's law, when I became a new Mom. The law allowed me to be both Mother and professional. Working for the Commission was an act of love and an immensely important and satisfying experience for me.

This law does not exist in the abstract. It is part of thousand's of workers everyday lives. American families are working families and though they may not need FMLA often, we found, when they needed it, the law was a life saver. In Chicago, San Francisco and Washington, companies also testified about real world experiences. Though some told us they might opt for changes in regulations, there was consensus from business participants (even those who were critical) that the law was a workplace plus.

Diane Quinn, Linda Paris and Stacey Oliphant worked tirelessly to contact individuals and companies who would testify and clarify the issues. The commission owes them a debt of gratitude. Becky Griffin, who has served the Commission from the beginning, was a guiding influence for us all.

My only regret about my Commission tenure was its length. I left before its work was complete. But Ann Bookman, as Research Director for the Women's Bureau, was my mentor from the beginning. As academic, steeped in family and medical leave issues, I think she was the perfect person to bring the work of the Commission to a close. This final report is a document for tomorrow's planning and a reflection of her talent.

I believe, this bi-partisan group of twelve, men and women who stood for ten years on opposite sides of the fight over the legislation, have produced a baseline of research which will serve future evaluations of the act. The Commission has served America well.

The Family and Medical Leave Act is protection from losing one's job. And as the Commission discovered, this is a right that few are willing to abuse.

Sincerely,

Susan Robinson King
Assistant Secretary of Labor

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Appendix E
Tables

TABLE 4.A

Demographic Profile of Employees by Coverage Status under FMLA

	All	Non-Covered	Covered	Covered and Eligible
ALL RESPONDENTS n =[1]	122,000,000	41,350,000	80,650,000	66,940,000
	100.0%	33.9%	66.1%	54.9%
GENDER				
Male	100.0%	36.5%	63.5%	54.2%
Female	100.0%	30.9%	69.1%	55.6%
AGE				
18-24	100.0%	37.0%	63.0%	34.4%
25-34	100.0%	30.3%	69.7%	59.5%
35-49	100.0%	32.1%	67.9%	60.5%
50-64	100.0%	37.7%	62.3%	54.3%
65 or over	100.0%	47.1%	52.9%	40.3%
RACE				
Latino	100.0%	40.6%	59.4%	48.5%
African American	100.0%	18.1%	81.9%	74.1%
Non-Latino White	100.0%	35.1%	64.9%	53.5%
Other	100.0%	20.1%	73.9%	51.5%
MARITAL STATUS				
Married	100.0%	35.0%	65.0%	56.7%
Living w/Partner	100.0%	33.6%	66.4%	59.5%
Separated	100.0%	23.7%	76.3%	72.6%
Divorced	100.0%	29.8%	70.2%	61.0%
Widowed	100.0%	24.5%	75.5%	63.0%
Never been Married	100.0%	34.5%	65.5%	40.8%
CHILDREN UNDER 18				
None	100.0%	35.6%	64.4%	52.3%
One or more	100.0%	31.7%	68.4%	58.3%
EDUCATION				
Less than High School	100.0%	46.9%	53.1%	47.0%
High School Graduate	100.0%	35.1%	64.9%	54.4%
Some College	100.0%	35.3%	64.8%	54.6%
Four Years of College or more	100.0%	28.4%	71.6%	57.6%
ANNUAL FAMILY INCOME				
Less than $20,000	100.0%	37.3%	62.7%	42.8%
$20 - 30,000	100.0%	31.9%	68.1%	57.5%
$30 - 50,000	100.0%	29.3%	70.7%	60.8%
$50 - 75,000	100.0%	27.7%	72.3%	64.1%
$75,000 or more	100.0%	30.0%	70.0%	60.4%
NA/Unknown	100.0%	41.6%	58.4%	48.8%
TYPE OF COMPENSATION				
Salaried	100.0%	30.7%	69.3%	61.7%
Hourly	100.0%	28.7%	71.3%	56.5%
Other	100.0%	67.2%	32.8%	24.9%
UNION STATUS				
Union	100.0%	10.2%	89.8%	81.3%
Non-union	100.0%	38.3%	61.7%	49.9%

SOURCE: AGUIRRE INTERNATIONAL TABULATIONS OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995.

Note: The "unknown" or "no answer" responses accounted for less than 2% of total responses in all catagories except income, where they have been included in the table.

[1] The emplyee survey contains interviews from a representative sample of 2255 employees from all sectors of the economy in the 48 contiguous states in which the survey was conducted. Their responses have been weighed to reflect the total number of employees in this population at the time of the survey - 122 million.

TABLE 4.B

Percentage of Worksites Changing Family and Medical Leave Policies by Type of Change[1]

LEAVE IS NOW JOB-GUARANTEED	
Yes	54.8%
No	45.2%
HEALTH INSURANCE CONTINUED DURING LEAVE OR LONGER PERIOD	
Yes	52.9%
No	47.1%
LEAVE CAN BE TAKEN FOR MORE REASONS	
Yes	76.9%
No	23.1%
LEAVE CAN BE TAKEN FOR A LONGER PERIOD OF TIME	
Yes	66.4%
No	33.6%
MALES TAKING LEAVE TO CARE FOR ILL OR NEWBORN CHILDREN	
Yes	69.3%
No	30.7%
EMPLOYEE ELIGIBILITY REQUIREMENTS HAVE BEEN EASED	
Yes	46.7%
No	53.3%

SOURCE: WESTAT INC. TABULATIONS OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

[1] Percentages in table refer to FMLA-covered worksites whose policies changed due to FMLA.

TABLE 4.C

Date of Establishment of Family and Medical Leave Policies by Size of Worksite, FMLA-Covered and Non-Covered Worksites

		DATE FAMILY AND MEDICAL LEAVE POLICIES ESTABLISHED				
SIZE OF WORKSITE	All	Before 1993	In 1993	After 1993	No Policies	Don't Know
ALL RESPONDENTS n=	7,342,784	1,448,871	610,840	84,803	4,882,456	315,814
	100.0%	19.7%	8.3%	1.2%	66.5%	4.3%
FMLA-COVERED*		38.7%	40.0%	3.3%	8.8%	9.1%
1-10		30.5%	48.9%	2.9%	0.0%	17.7%
11-25		33.7%	45.2%	0.6%	13.6%	6.9%
26-49		46.9%	44.1%	0.0%	4.5%	4.5%
50 or more		46.2%	29.4%	6.0%	13.3%	5.0%
FMLA-NON-COVERED		17.4%	4.5%	0.9%	73.5%	3.7%
1-10		14.9%	3.7%	0.2%	77.3%	3.9%
11-25		27.0%	9.2%	1.2%	60.0%	2.7%
26-49		35.3%	5.3%	12.0%	45.0%	2.6%
50 or more		0.0%	0.0%	0.0%	0.0%	0.0%

SOURCE: AGUIRRE INTERNATIONAL TABULATIONS OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995

*Worksites of fewer than 50 employees are covered under FMLA if the firm has at least 50 employees within a 75-mile radius.

TABLE 4.D

Availability of Up to 12 Weeks of Leave: FMLA-Covered and Non-Covered Worksites

ARE HEALTH BENEFITS (IF OFFERED) CONTINUED DURING LEAVE FOR:	FMLA-Covered	FMLA-Non-Covered	Total
EMPLOYEE'S OWN SERIOUS HEALTH CONDITION (EXCEPT MATERNITY-DISABILITY (1)			
Yes	92.6%	45.7%	50.8%
No	3.6%	41.8%	37.6%
Depends on Circumstances	3.8%	12.6%	11.6%
MOTHERS FOR MATERNITY-DISABILITY (1)			
Yes	96.6%	42.3%	48.4%
No	2.9%	46.9%	42.0%
Depends on Circumstances	0.5%	10.9%	9.7%
PARENTS TO CARE FOR A NEWBORN (1)			
Yes	92.5%	32.3%	38.9%
No	6.0%	53.9%	48.6%
Depends on Circumstances	1.6%	13.9%	12.5%
PARENTS TO CARE FOR ADOPTED OR FOSTER CHILD (1)			
Yes	91.3%	29.0%	35.5%
No	7.7%	57.4%	52.2%
Depends on Circumstances	1.0%	13.7%	12.4%
CARE OF ILL CHILD, SPOUSE, OR PARENT (1)			
Yes	94.2%	41.7%	47.4%
No	4.4%	46.8%	42.2%
Depends on Circumstances	1.4%	11.6%	10.5%
IS THE LEAVE AVAILABLE FOR ALL OF THE FMLA REASONS? (1)			
Yes	88.0%	20.7%	27.9%
No	12.0%	79.3%	72.1%

SOURCE: WESTAT INC. TABULATION OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995

(1) Difference between FMLA-covered and non-covered worksites is significant as p< .05.

TABLE 4.E

Continuation of Health Benefits During Leave: FMLA-Covered and Non-Covered Worksites [1]

ARE HEALTH BENEFITS (IF OFFERED) CONTINUED DURING LEAVE FOR:	FMLA-Covered	FMLA-Non-Covered	Total
EMPLOYEE'S OWN SERIOUS HEALTH CONDITION (EXCEPT MATERNITY-DISABILITY) [2]			
Yes	95.3%	77.9%	82.2%
No	1.3%	9.1%	7.2%
Depends on Circumstances	3.5%	13.0%	10.6%
MOTHERS FOR MATERNITY-DISABILITY [2]			
Yes	96.3%	86.3%	88.9%
No	1.2%	4.3%	3.5%
Depends on Circumstances	2.5%	9.4%	7.6%
PARENTS TO CARE FOR A NEWBORN [2]			
Yes	95.7%	72.5%	78.8%
No	0.9%	7.7%	5.9%
Depends on Circumstances	3.4%	19.8%	15.3%
PARENTS TO CARE FOR ADOPTED OR FOSTER CHILD [2]			
Yes	95.8%	75.9%	81.7%
No	1.0%	10.4%	7.7%
Depends on Circumstances	3.2%	13.7%	10.6%
CARE OF ILL CHILD, SPOUSE, OR PARENT [2]			
Yes	95.2%	69.0%	75.9%
No	1.5%	11.7%	9.0%
Depends on Circumstances	3.3%	19.3%	15.1%

SOURCE: WESTAT INC. TABULATION OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

[1] Percentages refer to worksites that make up to 12 weeks of leave available (or that it depends on circumstances).

[2] Difference between FMLA-covered and non-covered worksites is significant at $p< .05$.

TABLE 4.F

Are Employees Guaranteed Jobs Upon Return From Leave? FMLA-Covered and Non-Covered Worksites (1)

	FMLA-Covered	FMLA-Non-Covered	Total
EMPLOYEE'S OWN SERIOUS HEALTH CONDITION (EXCEPT MATERNITY-DISABILITY)			
Yes	94.7%	86.8%	88.1%
No	0.7%	1.7%	1.5%
Depends on Circumstances	4.6%	11.6%	10.4%
MOTHERS FOR MATERNITY-DISABILITY (2)			
Yes	99.2%	87.3%	89.5%
No	0.0%	2.1%	1.7%
Depends on Circumstances	0.8%	10.6%	8.8%
PARENTS TO CARE FOR A NEWBORN (2)			
Yes	99.2%	83.8%	86.9%
No	0.0%	2.0%	1.6%
Depends on Circumstances	0.8%	14.2%	11.5%
PARENTS TO CARE FOR ADOPTED OR FOSTER CHILD (2)			
Yes	99.0%	85.5%	88.2%
No	0.0%	3.3%	2.7%
Depends on Circumstances	1.0%	11.2%	9.2%
CARE OF ILL CHILD, SPOUSE, OR PARENT (2)			
Yes	98.9%	86.0%	88.3%
No	0.0%	2.6%	2.1%
Depends on Circumstances	1.1%	11.4%	9.5%

SOURCE: WESTAT INC. TABULATION OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

(1) Percentages in table refer to worksites that make up to 12 weeks of leave available (or that it depends on circumstances).

(2) Difference between FMLA-covered and non-covered worksites is significant at $p< .05$.

TABLE 4.G

Additional Family and Medical Leave Benefits Provided to Employees: FMLA-Covered and Non-Covered Worksites (1)

DOES YOUR ORGANIZATION OFFER:	FMLA-Covered	FMLA-Non-Covered	Total
JOB-GUARANTEED LEAVE FOR MORE THAN 12 WEEKS A YEAR (2)			
Yes	25.5%	25.6%	25.6%
No	58.2%	43.2%	45.7%
Depends on Circumstances	16.3%	31.2%	28.7%
JOB-GUARANTEED LEAVE TO EMPLOYEES WHO HAVE WORKED FOR YOUR ORGANIZATION LESS THAN 12 MONTHS (3)			
Yes	37.3%	25.9%	27.7%
No	47.2%	46.7%	46.8%
Depends on Circumstances	15.5%	27.5%	25.5%
JOB-GUARANTEED LEAVE TO EMPLOYEES WHO HAVE WORKED FOR YOU LESS THAN 1,250 HOURS IN THE PREVIOUS YEAR (2)			
Yes	31.1%	33.0%	32.7%
No	55.6%	41.0%	43.5%
Depends on Circumstances	13.3%	26.0%	23.8%

SOURCE: WESTAT INC. TABULATION OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

(1) Percentages refer to worksites which make up to 12 weeks of job-guaranteed leave available (or that depends on circumstances) for at least one of the reasons listed in Appendix E, Table 4.D.

(2) Difference between FMLA-covered and non-covered worksites is significant at $p< .05$.

(3) Difference between FMLA-covered and non-covered worksites is significant at $p< .10$.

TABLE 4.H

Additional Family and Medical Leave Benefits Provided to Employees, by Size of Worksite

(FMLA-COVERED WORKSITES ONLY) (1)

DOES YOUR ORGANIZATION OFFER:	Up to 250 Employees	More than 250 Employees	Total
JOB-GUARANTEED LEAVE FOR MORE THAN 12 WEEKS A YEAR (2)			
Yes	25.0%	34.1%	25.5%
No	59.3%	36.9%	58.2%
Depends on Circumstances	12.0%	7.4%	11.8%
JOB-GUARANTEED LEAVE TO EMPLOYEES WHO HAVE WORKED FOR YOUR ORGANIZATION LESS THAN 12 MONTHS (3)			
Yes	37.0%	43.2%	37.3%
No	47.9%	33.8%	47.2%
Depends on Circumstances	15.7%	29.0%	16.3%
JOB-GUARANTEED LEAVE TO EMPLOYEES WHO HAVE WORKED FOR YOU LESS THAN 1,250 HOURS IN THE PREVIOUS YEAR (2)			
Yes	30.6%	40.4%	31.1%
No	56.3%	40.9%	55.6%
Depends on Circumstances	13.1%	18.7%	13.3%

SOURCE: WESTAT INC. TABULATION OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995

(1) Percentages refer to worksites that make up to 12 weeks of job-guaranteed leave available (or that it depends on circumstances) for at least one of the reasons listed in Appendix E, Table 4.D.

(2) Difference between the worksite sizes of FMLA-covered worksites is significant at $p< .05$.

(3) Difference between the business sizes of FMLA-covered worksites is significant at $p< .10$.

TABLE 4.1

Continuation of Pay and Benefits During Leave: FMLA-Covered and Non-Covered Worksites

	FMLA-Covered	FMLA-Non-Covered	Total
ORGANIZATION PROVIDES *PAID* LEAVE, SUCH AS SICK OR VACATION LEAVE, OR DISABILITY INSURANCE			
Yes	85.0%	53.8%	57.5%
No	3.2%	41.6%	37.0%
Depends on Circumstances	11.8%	4.6%	5.5%
ORGANIZATION CONTINUES ITS CONTRIBUTIONS TO A PENSION OR RETIREMENT PLAN (IF OFFERED)			
Yes	62.6%	38.1%	41.7%
No	20.4%	59.0%	53.2%
Depends on Circumstances	17.1%	3.0%	5.1%
ORGANIZATION CONTINUES ITS CONTRIBUTIONS TO LIFE INSURANCE (IF OFFERED) (1)			
Yes	84.7%	50.4%	56.1%
No	12.3%	48.3%	42.3%
Depends on Circumstances	3.0%	1.3%	1.6%
ORGANIZATION CONTINUES ITS CONTRIBUTIONS TO DISABILITY INSURANCE (IF OFFERED) (1)			
Yes	87.6%	55.7%	60.3%
No	8.9%	41.2%	36.5%
Depends on Circumstances	3.6%	3.1%	3.2%

SOURCE: WESTAT INC. TABULATION OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

(1) Difference between FMLA-covered and non-covered worksites is significant at $p < .05$.

TABLE 4.J

Continuation of Pay and Benefits During Leave, by Size of Business

(FMLA-COVERED WORKSITES ONLY)

	Up to 250 Employees	More than 250 Employees	Total
ORGANIZATION PROVIDES *PAID* LEAVE, SUCH AS SICK OR VACATION LEAVE, OR DISABILITY INSURANCE			
Yes	84.8%	89.6%	85.0%
No	3.3%	3.0%	3.2%
Depends on Circumstances	12.0%	7.4%	11.8%
ORGANIZATION CONTINUES ITS CONTRIBUTIONS TO A PENSION OR RETIREMENT PLAN (IF OFFERED)			
Yes	62.2%	67.5%	62.6%
No	20.6%	17.1%	20.4%
Depends on Circumstances	17.2%	15.4%	17.1%
ORGANIZATION CONTINUES ITS CONTRIBUTIONS TO LIFE INSURANCE (IF OFFERED) (1)			
Yes	84.6%	86.2%	84.7%
No	12.6%	5.1%	12.3%
Depends on Circumstances	2.8%	8.7%	3.0%
ORGANIZATION CONTINUES ITS CONTRIBUTIONS TO DISABILITY INSURANCE (IF OFFERED) (1)			
Yes	87.8%	83.1%	87.6%
No	9.0%	7.2%	8.9%
Depends on Circumstances	3.3%	9.7%	3.6%

SOURCE: WESTAT INC. TABULATION OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995

(1) Difference between FMLA-covered and non-covered worksites is significant at $p < .05$.

TABLE 4.K

Employee's Knowledege of the Family and Medical Leave Act

	Knowledge of FMLA		
	Yes	No	Unknown
ALL	55.5%	43.4%	1.1%
COMPENSATION TYPE			
Salaried	63.3%	35.7%	1.0%
Hourly	50.0%	48.6%	1.4%
Piecework or Commission	42.9%	56.7%	0.4%
UNION STATUS			
Union	60.3%	38.7%	0.0%
Non-Union	54.7%	44.3%	0.0%
EDUCATION			
Less than High School	27.2%	71.3%	1.5%
High School Graduate	41.7%	57.4%	0.9%
Some College	59.1%	39.2%	1.7%
Four Years of College or more	70.4%	28.8%	0.8%

SOURCE: AGUIRRE INTERNATIONAL ANALYSIS OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995

TABLE 4.L

How Employees Learned About FMLA, by Leave Status

	LEAVE STATUS			
HOW LEARNED	All	Leave-Takers	Leave-Needers	Other Employees
All	100.0%	100.0%	100.0%	100.0%
Media	67.5%	61.1%	68.9%	68.7%
Coworkers	4.8%	6.0%	4.9%	4.6%
Employer	23.3%	27.5%	21.3%	22.5%
Family Member	2.0%	3.3%	3.1%	1.7%
Union	0.8%	1.3%	1.8%	0.7%
Unknown	1.5%	0.8%	0.0%	1.7%

SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995.

Note: 54,921,448 respondents are not included in this table because they report no knowledge of the FMLA.

TABLE 5.A

Demographic and Job Characteristic Profile of All Employees Surveyed, by Leave Status

		All	Leave-Taker	Leave-Needer	Employed-Only
ALL RESPONDENTS[1]	n=	121,940,000 100.0%	20,439,974 16.8%	4,129,261 3.4%	97,368,848 79.8%
GENDER					
Male		53.6%	41.8%	51.7%	56.2%
Female		46.3%	58.2%	48.1%	43.8%
AGE					
18-24		13.8%	11.5%	8.9%	14.5%
25-34		22.8%	29.6%	27.5%	21.2%
35-49		41.5%	40.8%	42.9%	41.6%
50-64		18.7%	15.3%	19.5%	19.4%
65 or over		3.2%	2.9%	1.0%	3.3%
RACE					
Latino		6.8%	8.8%	8.3%	6.3%
African American		8.6%	10.5%	16.5%	7.9%
Non-Latino White		80.5%	75.5%	70.3%	82.0%
Other		2.0%	1.9%	2.8%	1.9%
MARITAL STATUS					
Married/Living w/Partner		69.0%	70.7%	65.5%	68.8%
Separated/Divorced/Widowed		13.5%	16.5%	21.2%	12.5%
Never been Married		17.3%	12.5%	12.7%	18.5%
CHILDREN UNDER 18					
None		56.6%	46.1%	47.5%	59.2%
One or more		43.1%	53.8%	52.4%	40.5%
EDUCATION					
Less than High School		7.7%	10.4%	9.1%	7.0%
High School Graduate		29.1%	26.7%	25.5%	29.8%
Some College		28.8%	30.0%	35.7%	28.3%
4 Years of College or more		34.0%	32.6%	29.5%	34.5%
ANNUAL FAMILY INCOME[2]					
Less than $20,000		15.4%	17.5%	22.0%	14.7%
$20-30,000		12.4%	15.8%	17.3%	11.5%
$30-50,000		24.3%	25.3%	25.9%	24.1%
$50-75,000		11.3%	11.8%	11.4%	11.2%
$75,000 or more		11.0%	10.1%	8.9%	11.3%
COMPENSATION TYPE					
Salaried		37.5%	35.5%	29.7%	38.3%
Hourly		50.7%	55.2%	59.9%	49.4%
Other		11.7%	9.2%	10.3%	12.3%
UNION STATUS					
Union		16.2%	17.7%	16.7%	15.8%
Non-union		83.1%	81.8%	82.1%	83.5%

SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995

[1] The total number of employees in this table is somewhat less than 122 million (121,940,000), because three respondents could not be classified into one of the three catagories ("leave-takers," "leave-needers" or "employed-only").

[2] Annual Income figures do not add up to 100% because 25% of respondents did not answer this question.

TABLE 5.B

Leave-Takers at FMLA-Covered Worksites: Demographic and Job Characteristics, by Reason for Leave

(NUMBER OF EMPLOYEES AND PERCENTAGE OF ALL LEAVE-TAKERS REPORTING EACH REASON)

DEMOGRAPHIC AND JOB CHARACTERISTICS		Own Health	Maternity-Disability	Care For Newborn, Adopted or Foster Child	Care For Ill Child	Care For Ill Spouse	Care For Ill Parent	Care For Ill Relative or Other
ALL RESPONDENTS	n=	8,886,950	563,153	1,972,861	1,123,486	542,298	1,271,182	455,510
		60.0%	3.8%	13.3%	7.6%	3.7%	8.6%	3.1%
GENDER								
Male		65.1%	0.0%	14.5%	6.5%	5.5%	6.6%	1.5%
Female		56.4%	6.3%	12.5%	8.3%	2.3%	10.0%	4.1%
AGE								
18-24		54.6%	8.4%	18.2%	6.1%	1.8%	3.4%	7.5%
25-34		44.0%	7.7%	24.9%	12.8%	2.0%	7.2%	1.4%
35-49		65.4%	1.2%	8.9%	6.0%	3.9%	11.8%	2.8%
50-64		77.9%	0.0%	0.6%	3.8%	6.2%	7.6%	4.0%
65 or over		81.5%	0.0%	0.0%	0.0%	14.0%	4.5%	0.0%
RACE								
Latino		54.9%	2.4%	14.7%	17.0%	0.0%	8.5%	2.5%
African American		66.4%	5.8%	8.2%	5.6%	5.6%	6.7%	1.8%
Non-Latino White		59.7%	3.6%	14.0%	6.6%	3.8%	8.9%	3.4%
Other		42.1%	0.0%	26.4%	15.2%	0.0%	16.3%	0.0%
MARITAL STATUS								
Married/Living w/Partner		52.4%	4.7%	16.7%	9.5%	4.3%	8.8%	3.6%
Separated/Divorced/Widowed		74.4%	0.6%	6.4%	4.6%	4.0%	7.9%	2.3%
Never been Married		78.4%	3.6%	5.9%	2.1%	0.0%	8.4%	1.6%
CHILDREN UNDER 18								
None		77.6%	0.4%	0.4%	1.9%	4.0%	11.4%	4.3%
One or more		44.2%	6.8%	24.9%	12.7%	3.4%	6.0%	2.0%
EDUCATION								
Less than High School		73.0%	1.1%	5.0%	11.7%	4.0%	4.1%	1.1%
High School Graduate		64.6%	3.0%	14.7%	5.3%	4.0%	4.4%	4.0%
Some College		57.3%	4.4%	9.5%	7.8%	5.4%	10.2%	5.4%
4 Years of College or more		54.7%	4.7%	18.1%	8.0%	1.8%	11.8%	0.9%
ANNUAL FAMILY INCOME								
Less than $20,000		69.5%	2.8%	12.8%	6.4%	2.3%	5.1%	1.1%
$20-30,000		60.6%	2.5%	11.2%	11.4%	5.7%	6.5%	2.0%
$30-50,000		60.0%	5.1%	13.6%	5.5%	4.3%	6.3%	5.3%
$50-75,000		52.4%	3.0%	13.8%	7.6%	6.4%	12.7%	4.1%
$75,000 or more		52.7%	5.0%	21.9%	7.0%	0.9%	10.0%	2.5%
COMPENSATION TYPE								
Salaried		53.5%	5.9%	18.1%	6.8%	2.0%	12.9%	0.6%
Hourly		64.7%	2.5%	10.4%	8.3%	4.9%	4.7%	4.5%
Other		49.5%	4.1%	13.2%	4.0%	0.0%	24.6%	4.4%
UNION STATUS								
Union		69.5%	2.7%	10.0%	5.3%	4.5%	5.8%	2.3%
Non-union		57.1%	4.2%	14.3%	8.3%	3.4%	9.5%	3.2%

SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995.

Note: Percentages do not add to 100% because respondents could choose more than one category.

TABLE 5.C

Leave-Takers at Non-Covered Worksites: Demographic and Job Characteristics, by Reason for Leave

(NUMBER OF EMPLOYEES AND PERCENTAGE OF ALL LEAVE-TAKERS REPORTING EACH REASON)

DEMOGRAPHIC AND JOB CHARACTERISTICS	Own Health	Maternity-Disability	Care for Newborn, Adopted or Foster Child	Care for Ill Child	Care for Ill Spouse	Care for Ill Parent	Care for Ill Relative or Other
ALL RESPONDENTS n=	3,140,551	385,556	822,955	558,738	144,917	226,624	316,442
	56.1%	6.9%	14.7%	10.0%	2.6%	4.1%	5.7%
GENDER							
Male	65.2%	0.0%	15.4%	6.3%	4.3%	4.0%	4.9%
Female	49.3%	12.1%	14.2%	12.8%	1.3%	4.1%	6.2%
AGE							
18-24	52.5%	12.1%	12.0%	12.4%	0.0%	5.4%	5.6%
25-34	35.7%	14.4%	34.1%	9.9%	3.8%	0.0%	2.2%
35-49	59.7%	3.7%	9.1%	11.8%	1.8%	6.7%	7.2%
50-64	76.3%	0.0%	0.0%	5.9%	5.6%	4.2%	8.1%
65 or over	94.9%	0.0%	0.0%	0.0%	0.0%	0.0%	5.1%
RACE							
Latino	49.6%	18.4%	6.2%	5.7%	0.0%	3.4%	16.8%
African American	35.2%	0.0%	8.4%	46.7%	0.0%	4.9%	4.9%
Non-Latino White	57.0%	5.9%	16.2%	8.3%	3.3%	4.4%	4.9%
Other	40.5%	38.7%	21.0%	0.0%	0.0%	0.0%	0.0%
MARITAL STATUS							
Married/Living w/Partner	51.3%	8.6%	18.1%	10.8%	3.0%	3.1%	5.1%
Separated/Divorced/Widowed	68.5%	2.2%	4.1%	8.6%	1.9%	6.5%	8.3%
Never been Married	77.4%	0.0%	2.5%	5.1%	0.0%	8.4%	6.5%
CHILDREN UNDER 18							
None	83.6%	0.0%	0.0%	3.8%	1.8%	3.8%	7.1%
One or more	36.0%	12.1%	25.5%	14.3%	3.3%	4.3%	4.6%
EDUCATION							
Less than High School	57.9%%	5.0%	6.9%	5.3%	4.6%	7.6%	12.7%
High School Graduate	65.0%	3.7%	8.4%	13.9%	1.9%	3.9%	3.1%
Some College	53.7%	7.5%	20.2%	8.3%	2.4%	1.76%	6.3%
Four Years of College or more	48.5%	10.3%	18.2%	9.9%	2.8%	5.5%	4.9%
ANNUAL FAMILY INCOME							
Less than $20,000	64.7%	4.9%	14.2%	4.6%	1.6%	1.8%	8.3%
$20-30,000	56.6%	8.3%	6.7%	8.8%	5.0%	3.4%	11.7%
$30-50,000	54.0%	5.5%	26.9%	7.8%	2.2%	3.5%	0.0%
$50-75,000	55.1%	12.8%	16.1%	9.9%	2.9%	3.2%	0.0%
$75,000 or more	43.4%	8.3%	13.7%	13.4%	2.7%	7.8%	11.0%
COMPENSATION TYPE							
Salaried	50.0%	6.9%	19.4%	7.8%	5.2%	7.7%	3.1%
Hourly	52.6%	8.3%	14.5%	13.1%	1.2%	2.5%	7.8%
Other	72.9%	4.1%	7.7%	7.3%	1.3%	1.3%	5.5%
UNION STATUS							
Union	56.6%	6.8%	14.7%	0.0%	0.0%	14.3%	7.7%
Non-union	56.1%	6.9%	14.5%	10.5%	2.7%	3.7%	5.6%

SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995.

Note: Percentages do not add to 100% because respondents could choose more than one category.

TABLE 5.D

Leave-Takers at FMLA-Covered Worksites: Length of Leave by Reasons for Leave

(NUMBER AND PERCENTAGE OF EMPLOYEES)

		LENGTH OF LEAVE				
	All	1-7 Days	8-14 Days	15-28 Days	29-84 Days	85+ Days
ALL REASONS n=	14,820,000 100.0%	5,964,2,09 40.3%	2,486,777 16.8%	1.311,014 8.9%	3,196,064 21.6%	1,857,375 12.5%
REASON FOR LEAVE						
Own Health	100.0%	34.4%	17.2%	10.8%	24.0%	13.6%
Maternity-Disability	100.0%	10.4%	7.3%	5.7%	34.2%	42.4%
Care for Newborn, Adopted or Foster Child	100.0%	23.7%	17.1%	7.0%	36.0%	16.2%
Care for Ill Child	100.0%	76.3%	15.6%	5.3%	1.4%	1.4%
Care for Ill Spouse	100.0%	65.5%	16.1%	2.7%	7.9%	7.9%
Care for Ill Parent	100.0%	56.3%	24.6%	8.4%	8.3%	2.4%
Care for Ill Relative or Other	100.0%	100.0%	0.0%	0.0%	0.0%	0.0%

SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995

TABLE 5.E

Leave-Takers at Non-Covered Worksites: Length of Leave by Reasons for Leave

(NUMBER AND PERCENTAGE OF EMPLOYEES)

	LENGTH OF LEAVE					
	All	1-7 Days	8-14 Days	15-28 Days	29-84 Days	85+ Days
ALL RESPONDENTS n=	5,595,782 100.0%	2,440,595 44.6%	759,429 13.6%	509,933 9.1%	818,637 14.6%	1,067,189 19.1%
REASON FOR LEAVE						
Own Health	100.0%	36.7%	17.1%	12.4%	13.4%	20.4%
Maternity-Disability	100.0%	0.0%	0.0%	3.8%	50.2%	46.0%
Care for Newborn, Adopted or Foster Child	100.0%	37.1%	9.2%	10.9%	22.9%	20.0%
Care for Ill Child	100.0%	79.5%	8.0%	2.8%	0.0%	9.7%
Care for Ill Spouse	100.0%	58.9%	30.8%	0.0%	0.0%	10.3%
Care for Ill Parent	100.0%	59.7%	26.2%	0.0%	6.6%	7.5%
Care for Sick relative or Other	100.0%	100.0%	0.0%	0.0%	0.0%	0.0%

SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN. SURVEY OF EMPLOYEES, 1995

TABLE 5.F

All Leave-Takers: Demographic and Job Characteristics by Length of Leave

(NUMBER AND PERCENTAGE OF EMPLOYEES)

			LENGTH OF LEAVE				
		All	1-7 Days	8-14 Days	15-28 Days	29-84 Days	85+ Days
ALL RESPONDENTS	n=	20,439,974 100.0%	8,433,556 41.3%	3,246,206 15.9%	1,820,947 8.9%	4,014,701 19.6%	2,924,564 14.3%
GENDER							
Male		100.0%	46.7%	19.8%	7.7%	13.2%	12.6%
Female		100.0%	37.3%	13.1%	9.8%	24.3%	15.5%
AGE							
18-24		100.0%	41.6%	13.8%	9.0%	21.0%	14.5%
25-34		100.0%	41.1%	13.3%	8.5%	22.4%	14.8%
35-49		100.0%	41.8%	18.6%	8.4%	17.6%	13.7%
50-64		100.0%	40.8%	14.0%	10.1%	19.3%	15.8%
65 or over		100.0%	36.7%	21.9%	14.3%	17.3%	9.9%
RACE							
Latino		100.0%	56.3%	7.0%	5.1%	16.3%	15.3%
African American		100.0%	49.5%	12.6%	4.7%	17.6%	15.6%
Non-Latino White		100.0%	38.8%	17.6%	9.8%	20.7%	13.2%
EDUCATION							
Less than High School		100.0%	42.9%	11.2%	5.0%	23.4%	17.6%
High School Graduate		100.0%	37.5%	16.3%	7.9%	22.2%	16.1%
Some College		100.0%	38.4%	19.0%	9.1%	19.0%	14.6%
4 Years of College or more		100.0%	46.0%	14.2%	11.0%	17.2%	11.7%
ANNUAL FAMILY INCOME							
Less than 20,000		100.0%	41.7%	14.0%	6.6%	19.0%	18.6%
$20-30,000		100.0%	48.5%	15.6%	6.8%	15.3%	13.8%
$30-50,000		100.0%	41.4%	14.4%	10.3%	21.4%	12.6%
$50-75,000		100.0%	34.6%	23.6%	10.0%	21.8%	10.0%
$75,000 or more		100.0%	45.8%	14.1%	8.7%	19.4%	12.0
COMPENSATION TYPE							
Salaried		100.0%	47.2%	15.7%	9.2%	16.9%	11.1%
Hourly		100.0%	39.5%	15.2%	8.6%	21.3%	15.3%
Other		100.0%	29.5%	20.6%	9.2%	19.6%	21.1%

SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN. SURVEY OF EMPLOYEES, 1995.

Note: Because of missing data for some cells, the total varies for different variables.

TABLE 5.G

Reason for Needing Leave Among Employees Who Needed but Did Not Take Leave, by Demographic and Job Characteristics

(NUMBER AND PERCENTAGE OF ALL LEAVE-NEEDERS REPORTING EACH REASON)

DEMOGRAPHIC AND JOB CHARACTERISTICS		All Leave-Needers	Own Health	Maternity-Disability	Care for Newborn Adopted or Foster Child	Care for Ill Child, Spouse, or Parent	Care for Ill Relative or Other
ALL RESPONDENTS	n=	4,129,261	1,797,814	19,762	345,096	1,721,782	424,200
		100.0%	43.7%	0.5%	8.4%	41.7%	10.2%
GENDER							
Male		100.0%	41.6%	0.0%	14.4%	39.5%	10.0%
Female		100.0%	45.1%	1.0%	2.1%	44.0%	10.3%
AGE							
18-24		100.0%	52.8%	0.0%	16.7%	25.3%	5.6%
25-34		100.0%	45.0%	0.0%	14.4%	39.6%	4.5%
35-49		100.0%	36.4%	1.2%	5.2%	49.1%	12.7%
50-64		100.0%	51.9%	0.0%	2.5%	38.2%	15.2%
65 or over		100.0%	100.0%	0.0%	0.0%	0.0%	0.0%
RACE							
Non-Latino White		100.0%	42.6%	0.7%	7.7%	42.4%	11.3%
All Other		100.0%	44.5%	0.0%	10.9%	40.1%	8.2%
MARITAL STATUS							
Married/Living w/Partner		100.0%	35.6%	0.0%	11.7%	44.0%	12.9%
Separated/Divorced/Widowed		100.0%	54.7%	2.3%	0.0%	45.3%	4.7%
Never been Married		100.0%	68.6%	0.0%	3.9%	25.5%	3.9%
CHILDREN UNDER 18							
None		100.0%	56.8%	0.0%	1.0%	31.1%	15.1%
One or more		100.0%	31.6%	0.9%	15.1%	51.3%	6.1%
EDUCATION							
Less than High School		100.0%	67.6%	0.0%	0.0%	23.1%	10.8%
High School Graduate		100.0%	42.7%	1.9%	11.7%	38.5%	8.7%
Some College		100.0%	41.7%	0.0%	7.6%	45.5%	7.6%
4 Years of College or more		100.0%	39.5%	0.0%	8.4%	45.6%	15.1%
ANNUAL FAMILY INCOME							
Less than $20,000		100.0%	52.8%	0.0%	9.0%	33.1%	9.0%
$20-30,000		100.0%	48.6%	0.0%	2.9%	45.5%	12.9%
$30-50,000		100.0%	39.4%	1.9%	7.7%	45.9%	10.6%
$50-75,000		100.0%	32.6%	0.0%	17.4%	46.0%	4.3%
$75,000 or more		100.0%	36.1%	0.0%	5.6%	53.2%	5.6%
COMPENSATION TYPE							
Salaried		100.0%	41.7%	0.0%	8.3%	40.7%	9.2%
Hourly		100.0%	44.2%	0.0%	9.1%	44.0%	9.9%
Other		100.0%	100.0%	4.8%	4.8%	31.6%	14.3%
UNION STATUS							
Union		100.0%	46.3%	0.0%	14.9%	31.2%	17.9%
Non-union		100.0%	42.8%	0.6%	7.2%	43.8%	9.0%

SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN. SURVEY OF EMPLOYEES, 1995.

Note: Row totals do not add to 100% because respondents could choose more than one category.

TABLE 5.H

Reasons for Not Taking Leave Among All Leave-Needers by Reason for Needing Leave

(NUMBER AND PERCENTAGE OF EMPLOYEES)

REASONS	All	Might Lose Job	Might Hurt Job Advancement	Might Lose Seniority	Not Eligible	Employer Denied Request	Couldn't Afford	Wanted to Save Leave Time	Work Too Important
ALL RESPONDENTS	4,129,261	29.2%	22.0%	14.1%	13.9%	9.9%	63.9%	27.5%	39.4%
Own health	100.0%	37.5%	22.7%	15.3%	13.6%	10.8%	64.8%	15.9%	43.8%
Maternity-Disability	100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	0.0%
Care for Newborn, Adopted or Foster Child	100.0%	23.5%	29.4%	23.5%	5.9%	11.8%	64.7%	26.5%	44.1%
Care for Ill Child	100.0%	34.8%	33.3%	15.9%	18.8%	15.9%	72.5%	40.6%	34.8%
Care for Ill Spouse	100.0%	13.5%	35.1%	24.3%	24.3%	0.0%	64.9%	54.1%	59.5%
Care for Ill Parent	100.0%	17.6%	10.8%	5.4%	9.5%	10.8%	60.8%	35.1%	31.1%

SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995

Note: Percentages do not sum to 100% because respondents could choose more than one category.

TABLE 5.1

Likelihood of Needing Leave Over the Next Five Years by Demographics Among All Employees

(NUMBER AND PERCENTAGE OF EMPLOYEES)

DEMOGRAPHIC AND JOB CHARACTERISTICS	All	Very Likely	Somewhat Likely	Somewhat Unlikely	Very Unlikely
ALL RESPONDENTS n=	119,360,000	21,381,391	25,680,000	31,060,000	41,235,398
	100.0%	17.9%	21.5%	26.0%	34.6%
GENDER					
Male	100.0%	15.4%	19.6%	30.0%	35.0%
Female	100.0%	20.8%	23.7%	21.4%	34.1%
AGE					
18-24	100.0%	13.5%	21.4%	30.5%	34.6%
25-34	100.0%	21.4%	26.5%	25.5%	26.6%
35-49	100.0%	18.1%	21.3%	25.8%	34.8%
50-64	100.0%	15.6%	15.2%	24.7%	44.5%
65 or over	100.0%	23.0%	26.0%	20.3%	30.8%
RACE					
Latino	100.0%	24.4%	22.1%	17.9%	35.7%
African American	100.0%	21.4%	22.8%	16.6%	39.2%
Non-Latino White	100.0%	16.9%	21.5%	28.2%	33.4%
Other	100.0%	18.7%	24.4%	11.1%	45.8%
MARITAL STATUS					
Married/Living w/Partner	100.0%	19.0%	21.9%	25.8%	33.4%
Separated/Divorced/Widowed	100.0%	20.4%	19.0%	20.4%	40.2%
Never been Married	100.0%	12.0%	22.2%	30.9%	34.9%
CHILDREN UNDER 18					
None	100.0%	17.2%	20.4%	25.6%	36.8%
One or more	100.0%	18.9%	23.0%	26.5	31.6%
EDUCATION					
Less than High School	100.0%	23.8%	13.1%	25.6%	37.5%
High School Graduate	100.0%	15.6%	18.1%	29.4%	36.8%
Some College	100.0%	15.8%	23.6%	23.1%	37.5%
4 Years of College or more	100.0%	20.4%	24.5%	25.4%	29.6%
ANNUAL FAMILY INCOME					
Less than $20,000	100.0%	20.3%	21.3%	23.0%	35.5%
$20-30,000	100.0%	19.1%	23.5%	28.1%	29.3%
$30-50,000	100.0%	21.5%	21.3%	27.3%	29.9%
$50-75,000	100.0%	22.2%	20.0%	26.8%	31.0%
$75,000 or more	100.0%	16.1%	27.5%	21.9%	34.5%
COMPENSATION TYPE					
Salaried	100.0%	18.5%	23.7%	24.3%	33.6%
Hourly	100.0%	17.7%	20.0%	27.2%	35.1%
Other	100.0%	17.2%	21.6%	25.6%	35.6%
UNION STATUS					
Union	100.0%	14.5%	18.2%	26.7%	40.5%
Non-union	100.0%	18.7%	22.2%	25.7%	33.5%

SOURCE AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN. SURVEY OF EMPLOYEES, 1995

Note: Because missing data are excluded, totals in subgroups do not always equal the total number of respondents.

TABLE 5.J

Anticipated Need for Leave Among Employees Who Are Very or Somewhat Likely to Need Leave in the Next Five Years, by Demographic and Job Characteristics by Reason

(NUMBER AND PERCENTAGE OF NON-TAKING, NON-NEEDING EMPLOYEES REPORTING EACH REASON FOR NEEDING LEAVE)

DEMOGRAPHIC AND JOB CHARACTERISTICS	All	Own Health	Care for Newborn, Adopted or Foster Child	Care for Ill Child	Care for Ill Spouse	Care for Ill Parent	Care for Ill Relative or Other
ALL RESPONDENTS n=	31,290,000	9,238,045	6,916,687	3,405,913	3,262,013	12,130,000	2,745,261
	100.0%	29.5%	22.1%	10.9%	10.4%	38.8%	8.8%
GENDER							
Male	100.0%	33.7%	16.2%	9.7%	17.4%	35.2%	10.6%
Female	100.0%	25.3%	28.2%	12.1%	3.2%	42.5%	6.9%
AGE							
18-24	100.0%	21.0%	47.6%	3.1%	0.0%	25.5%	16.1%
25-34	100.0%	23.4%	33.2%	14.0%	10.7%	23.7%	4.8%
35-49	100.0%	26.3%	15.1%	13.3%	12.9%	48.7%	11.8%
50-64	100.0%	39.9%	3.4%	8.8%	12.6%	58.0%	0.0%
65 or over	100.0%	82.9%	8.5%	0.0%	9.1%	17.0%	9.9%
RACE							
Latino	100.0%	20.5%	18.7%	5.9%	0.7%	43.5%	18.9%
African American	100.0%	45.1%	31.9%	11.6%	19.7%	21.6%	10.1%
Non-Latino White	100.0%	28.3%	21.9%	10.7%	9.6%	40.2%	7.0%
Other	100.0%	61.3%	0.0%	19.0%	19.0%	38.7%	41.2%
MARITAL STATUS							
Married/Living w/Partner	100.0%	28.3%	22.9%	12.9%	14.0%	37.8%	7.5%
Separated/Divorced/Widowed	100.0%	37.8%	7.1%	7.4%	3.3%	48.8%	11.7%
Never been Married	100.0%	29.2%	32.7%	4.8%	0.0%	36.2%	12.1%
CHILDREN UNDER 18							
None	100.0%	35.5%	24.5%	4.4%	9.3%	36.8%	8.8%
One or more	100.0%	21.3%	18.9%	19.8%	11.9%	41.4%	8.8%
EDUCATION							
Less than High School	100.0%	25.6%	20.5%	1.7%	16.2%	22.4%	16.3%
High School Graduate	100.0%	39.9%	19.2%	11.6%	11.0%	31.6%	6.2%
Some College	100.0%	27.2%	17.2%	12.6%	7.8%	39.1%	11.9%
4 Years of College or more	100.0%	25.5%	27.4%	10.6%	11.1%	45.1%	7.1%
ANNUAL FAMILY INCOME							
Less than $20,000	100.0%	34.8%	18.7%	6.0%	8.1%	32.1%	14.0%
$20-30,000	100.0%	39.3%	17.2%	14.0%	10.3%	31.1%	10.0%
$30-50,000	100.0%	29.7%	29.9%	10.1%	11.1%	34.2%	5.9%
$50-75,000	100.0%	23.7%	16.9%	17.3%	19.7%	45.8%	9.6%
$75,000 or more	100.0%	29.8%	21.5%	9.3%	9.1%	45.4%	3.1%
COMPENSATION TYPE							
Salaried	100.0%	34.0%	27.5%	8.4%	11.4%	36.1%	4.2%
Hourly	100.0%	29.1%	19.4%	14.2%	6.8%	40.9%	10.7%
Other	100.0%	15.4%	13.4%	7.3%	20.9%	40.1%	17.5%
UNION STATUS							
Union	100.0%	38.3%	13.9%	11.7%	11.3%	47.8%	0.4%
Non-union	100.0%	28.0%	23.3%	10.8%	10.4%	37.7%	10.0%

SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995

Note: Percentages do not add to 100 percent because respondents could choose more than one catagory.

TABLE 5.K

Methods Used to Cover Work of Leave-TakersWhile They Were Off the Job, by Demographic and Job Characteristics

(NUMBER AND PERCENTAGE OF EMPLOYEES)

DEMOGRAPHIC AND JOB CHARACTERISTICS		Other Employees	Temporary Replacement	Permanent Replacement	Other
ALL RESPONDENTS	n=	13,796,225	3,231,614	1,204,742	2,334,961
		67.5%	15.8%	5.9%	11.4%
GENDER					
Male		68.0%	9.1%	5.4%	11.4%
Female		67.1%	20.7%	6.3%	11.4%
AGE					
18-24		70.3%	13.5%	10.9%	9.6%
25-34		65.7%	16.6%	7.3%	14.7%
35-49		69.8%	17.5%	4.9%	9.6%
50-64		64.6%	11.5%	3.0%	9.8%
65 or over		57.9%	14.0%	1.8%	19.3%
RACE					
Latino		61.9%	14.2%	7.4%	6.3%
African American		68.9%	23.9%	7.2%	13.4%
Non-Latino White		68.0%	14.2%	5.6%	11.7%
EDUCATION					
Less than High School		70.2%	19.2%	6.3%	6.3%
High School Graduate		74.5%	13.5%	7.1%	9.8%
Some College		69.1%	13.4%	8.3%	11.5%
4 Years of College or more		59.6%	18.9%	2.5%	14.4%
ANNUAL FAMILY INCOME					
Less than $20,000		74.8%	17.5%	11.2%	9.2%
$20-30,000		64.9%	12.7%	7.0%	7.6%
$30-50,000		67.9%	14.1%	5.7%	11.7%
$50-75,000		72.9%	18.6%	3.0%	12.7%
$75,000 or more		57.2%	17.9%	1.5%	17.9%
COMPENSATION TYPE					
Salaried		63.2%	16.3%	3.1%	13.7%
Hourly		72.6%	15.5%	7.6%	9.8%
UNION STATUS					
Union		74.9%	17.2%	4.0%	10.5%
Non-union		66.1%	15.6%	6.4%	11.7%

SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995

TABLE 5.L

Methods Used to Cover Work of Leave-Takers While They Were off the Job, by Sector (As Reported by Worksites)

(NUMBER AND PERCENTAGE OF WORKSITES REPORTING EACH METHOD)

INDUSTRY SECTOR	All	Other Employees	Temporary Replacement	Permanent Replacement	Put Work On Hold	Employee Work at Home	Other
All Sectors	7,342,784	69.4%	37.4%	9.1%	32.9%	20.1%	2.6%
Manufacturing	479,112	87.5%	37.7%	4.1%	41.1%	23.5%	2.9%
Retail	1,669,897	69.7%	33.0%	15.2%	36.3%	18.0%	2.4%
Services	2,705,346	61.0%	37.2%	6.0%	29.0%	20.0%	4.9%
All other industries	2,488,429	74.8%	40.5%	9.4%	33.3%	21.0%	0.1%

SOURCE: AGUIRRE INTERNATIONAL TABULATIONS OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

Note: Percentages do not sum to 100% because respondents could choose more than one category.

TABLE 5.M

Methods to Cover the Work of Leave-Takers While They Were Off the Job (As Reported by Worksites)

(NUMBER AND PERCENTAGE OF WORK SITES REPORTING EACH METHOD)

NUMBER OF EMPLOYEES AT WORKSITE	All	Other Employees	Temporary Replacement	Permanent Replacement	Put Work On Hold	Employee Work at Home	Other
ALL WORKSITES	7,342,784	69.4%	37.4%	9.1%	32.9%	20.1%	2.6%
0-9	5,440,578	61.8%	33.5%	6.8%	39.8%	21.6%	2.5%
10-24	1,141,357	90.4%	48.7%	20.5%	13.9%	11.8%	1.0%
25-49	4,498,686	88.7%	38.9%	6.2%	13.2%	26.6%	7.3%
50-99	1,701,899	97.8%	61.8%	10.7%	7.9%	12.5%	1.0%
100-249	101,229	96.3%	60.8%	15.6%	9.1%	15.5%	7.8%
250-499	24,006	99.3%	66.3%	15.7%	16.0%	19.4%	4.0%
500-999	9744	96.8%	68.0%	14.7%	13.4%	25.2%	2.5%
1000 or more	5813	99.1%	79.8%	14.0%	23.1%	27.6%	5.9%

SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995

Note: Percentages do not sum to 100% because respondents could choose more than one category.

TABLE 5.N

Continuation of Health Benefits During Leave: FMLA-Covered and Non-Covered Worksites (1)

ARE HEALTH BENEFITS (IF OFFERED) CONTINUED DURING LEAVE FOR:	FMLA-Covered	Non-Covered	Total
EMPLOYEE'S OWN SERIOUS HEALTH CONDITION (EXCEPT MATERNITY-DISABILITY) (2)			
Yes	95.3%	77.9%	82.2%
No	1.3%	9.1%	7.2%
Depends on Circumstances	3.5%	13.0%	10.6%
MOTHERS FOR MATERNITY-DISABILITY (2)			
Yes	96.3%	86.3%	88.9%
No	1.2%	4.3%	3.5%
Depends on Circumstances	2.5%	9.4%	7.6%
PARENTS, TO CARE FOR A NEWBORN (2)			
Yes	95.7%	72.5%	78.8%
No	0.9%	7.7%	5.9%
Depends on Circumstances	3.4%	19.8%	15.3%
PARENTS TO CARE FOR ADOPTED OR FOSTER CHILD (2)			
Yes	95.8%	75.9%	81.7%
No	1.0%	10.4%	7.7%
Depends on Circumstances	3.2%	13.7%	10.6%
CARE OF ILL CHILD, SPOUSE OR PARENT (2)			
Yes	95.2%	69.0%	75.9%
No	1.5%	11.7%	9.0%
Depends on Circumstances	3.3%	19.3%	15.1%

(1) Percentages in table refer to worksites offering health benefits to employees and that make up to 12 weeks of leave available (or that it depends on circumstances).

(2) Difference between FMLA-covered and non-covered worksites is significant at $p<.05$.

TABLE 5.0

Leave-Takers at FMLA-Covered Worksites: Extent to Which Leave Was Paid, by Reason for Leave

(NUMBER AND PERCENTAGE OF EMPLOYEES)

REASONS FOR LEAVE		Fully Paid	Partially Paid	Unpaid
ALL REASONS	n=	7,397,664 51.9%	3,064,680 21.5%	3,790,157 26.6%
Own Health		53.3%	23.2%	23.5%
Maternity-Disability		29.1%	42.2%	28.7%
Care for Newborn, Adopted or Foster Child		46.2%	23.3%	30.5%
Care for Ill Child		55.6%	16.0%	28.4%
Care for Ill Spouse		51.7%	2.5%	45.8%
Care for Ill Parent		57.6%	10.9%	31.6%

SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995.

Note: Because missing data are excluded, totals in subgroups do not always equal the total number of respondents.

TABLE 5.P

Leave-Takers at Non-Covered Worksites: Extent to Which Leave Was Paid, by Reason for Leave

(NUMBER AND PERCENTAGE OF LEAVE)

REASONS FOR LEAVE		Fully Paid	Partially Paid	Unpaid
ALL REASONS	n=	1,712,379 32.6%	757,336 14.4%	2,779,636 53.0%
Own health		32.8%	14.9%	52.4%
Maternity-Disability		15.4%	26.3%	58.3%
Care for Newborn, Adopted or Foster Child		37.0%	16.1%	46.9%
Care for Ill Child		21.5%	11.0%	67.6%
Care for Ill Spouse		60.7%	0.0%	39.3%
Care for Ill Parent		53.4%	0.0%	46.6%

SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995.

Note: Because missing data are excluded, totals in subgroups do not always equal the total number of respondents.

TABLE 5.Q

All Leave-Takers: Extent to Which Leave Was Paid, by Demographic and Job Characteristics

(NUMBER AND PERCENTAGE OF EMPLOYEES)

DEMOGRAPHIC AND JOB CHARACTERISTICS		Fully Paid	Partially Paid	Unpaid
ALL RESPONDENTS	n=	9,110,043	3,822,016	6,569,793
		46.7%	19.6%	33.7%
GENDER				
Male		53.5%	15.1%	31.4%
Female		41.7%	23.0%	35.3%
AGE				
18-24		35.8%	15.1%	49.1%
25-34		43.4%	24.0%	32.5%
35-49		48.1%	17.1%	34.9%
50-64		59.6%	22.0%	18.5%
65 or over		38.9%	13.0%	48.1%
RACE				
Latino		42.0%	11.7%	46.3%
African American		45.5%	21.8%	32.7%
Non-Latino White		47.4%	20.5%	32.2%
Other		55.3%	7.9%	36.8%
MARITAL STATUS				
Married/Living w/Partner		46.9%	19.0%	34.0%
Separated/Divorced/Widowed		47.9%	24.6%	27.4%
Never been Married		43.2%	15.8%	41.1%
CHILDREN UNDER 18				
None		49.7%	18.7%	31.7%
One or more		44.3%	20.3%	35.4%
EDUCATION				
Less than High School		34.5%	19.3%	46.2%
High School Graduate		31.8%	26.1%	42.1%
Some College		45.3%	17.9%	36.9%
4 Years of College or more		63.7%	15.9%	20.4%
ANNUAL FAMILY INCOME				
Less than $20,000		27.8%	22.8%	49.4%
$20-30,000		43.5%	17.6%	38.9%
$30-50,000		53.1%	22.1%	24.8%
$50-75,000		58.1%	18.3%	23.6%
$75,000 or more		64.1%	15.1%	20.8%
COMPENSATION TYPE				
Salaried		76.4%	13.0%	10.5%
Hourly		32.5%	24.7%	42.8%
Other		12.9%	15.3%	71.8%
UNION STATUS				
Union		56.5%	25.2%	18.3%
Non-union		44.6%	18.3%	37.1%

SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995

Note: Because missing data are excluded, totals in subgroups do not always equal the total number of respondents.

TABLE 5.R

Leave-Takers'[1] Methods of Covering Lost Wages by Demographic and Job Characteristics

(NUMBER AND PERCENTAGE OF EMPLOYEES)

DEMOGRAPHIC AND JOB CHARACTERISTICS		Savings Earmarked for Leave	Other Savings	Borrow Money	Public Assistance	Limit Extras	Put Off Paying Bills	Cut Leave Short
ALL CHARACTERISTICS	n=	4,530,339 43.7%	4,194,365 40.6%	2,591,633 25.1%	930,656 9.0%	7,835,715 75.5%	4,023,382 38.8%	4,164,643 40.3%
GENDER								
Male		44.9%	44.3%	24.9%	4.5%	70.8%	33.6%	36.9%
Female		42.9%	38.3%	25.1%	11.6%	78.3%	41.8%	42.4%
AGE								
18-24		47.2%	37.4%	31.2%	16.1%	73.9%	32.6%	31.0%
25-34		46.1%	39.7%	27.8%	11.4%	79.3%	42.2%	36.1%
35-49		39.0%	42.8%	23.5%	6.1%	77.3%	44.8%	52.8%
50-64		50.7%	43.3%	21.4%	6.1%	67.0%	25.5%	24.8%
65 or over		37.7%	24.3%	4.1%	0.0%	54.0%	4.2%	25.1%
RACE								
Latino		52.3%	50.2%	36.3%	11.5%	79.2%	45.9%	55.0%
African American		55.7%	59.9%	31.1%	13.8%	79.8%	54.0%	43.3%
Non-Latino White		40.2%	37.0%	22.8%	8.0%	75.0%	34.8%	36.6%
Other		90.8%	82.2%	19.2%	8.9%	81.6%	28.1%	53.9%
CHILDREN UNDER 18								
None		36.9%	38.9%	19.1%	4.8%	68.9%	34.0%	41.1%
One or more		48.7%	41.1%	29.6%	12.2%	80.5%	42.4%	39.8%
EDUCATION								
Less than High School		49.0%	40.3%	24.2%	14.9%	80.8%	38.8%	44.7%
High School Graduate		38.5%	35.3%	24.8%	7.0%	74.4%	47.1%	42.9%
Some College		42.0%	47.9%	29.7%	11.3%	75.1%	41.9%	41.2%
4 Years of College or more		51.1%	39.4%	20.2%	5.7%	75.8%	22.7%	32.8%
ANNUAL FAMILY INCOME								
Less than $20,000		49.0%	46.9%	37.8%	20.9%	87.9%	52.0%	43.8%
$20-30,000		38.6%	43.0%	28.0%	5.0%	82.3%	50.3%	43.8%
$30-50,000		45.0%	40.4%	28.8%	3.9%	73.8%	29.8%	31.4%
$50-75,000		44.7%	34.2%	12.6%	1.5%	71.5%	29.3%	49.1%
$75,000 or more		38.6%	30.3%	8.8%	2.1%	58.7%	17.6%	34.2%
COMPENSATION TYPE								
Salaried		48.8%	36.4%	20.9%	4.3%	70.7%	27.3%	27.1%
Hourly		44.4%	43.7%	28.1%	10.4%	78.9%	41.9%	42.0%
Other		34.6%	30.1%	15.5%	7.5%	64.3%	36.9%	47.7%
UNION STATUS								
Union		34.7%	40.2%	24.4%	4.9%	77.2%	47.4%	36.5%
Non-union		45.3%	40.7%	25.0%	9.6%	75.2%	37.4%	41.1%

SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN. SURVEY OF EMPLOYEES, 1995

Note: Percentages do not sum to 100% because respondents could choose more than one category.

[1] Only leave-takers who report partial wage replacement or no wage replacement were asked about methods of covering lost wages.

TABLE 5.5

Leave-Takers Returning to Work, by Coverage Status, Demographic and Job Characteristics and Extent of Pay

(NUMBER AND PERCENTAGE OF EMPLOYEES)

DEMOGRAPHIC AND JOB CHARACTERISTICS	Returned to Work After Leave Returned to Same Employer	 Did Not Return	 Still on Leave
ALL RESPONDENTS n=	16,537,522 84.0%	1,098,540 5.6%	2,048,117 10.4%
FMLA-COVERED EMPLOYEES			
No	79.4%	10.9%	9.7%
Yes	87.2%	1.9%	10.9%
GENDER			
Male	86.7%	4.2%	9.1%
Female	82.0%	6.6%	11.4%
AGE			
18-24	75.0%	6.7%	18.2%
25-34	82.0%	7.4%	10.5%
35-49	87.5%	4.0%	8.5%
50-64	85.5%	4.4%	10.0%
65 or over	82.4%	10.0%	7.6%
RACE			
Latino	81.2%	11.1%	7.7%
African American	78.4%	6.5%	15.2%
Non-Latino White	84.6%	5.0%	10.4%
Other	95.9%	4.1%	0.0%
MARITAL STATUS			
Married/Living w/Partner	85.2%	5.6%	9.1%
Seperated/Divorced/Widowed	81.7%	5.5%	12.8%
Never been Married	80.4%	4.8%	14.7%
CHILDREN UNDER 18			
None	84.8%	4.7%	10.5%
One or more	83.3%	6.3%	10.4%
EDUCATION			
Less than High School	80.7%	4.5%	14.9%
High School Graduate	82.9%	5.1%	11.9%
Some College	82.1%	6.7%	11.2%
4 Years of College or more	87.7%	5.3%	7.0%
ANNUAL FAMILY INCOME			
Less than $20,000	72.5%	9.8%	17.8%
$20-30,000	84.6%	5.3%	10.0%
$30-50,000	85.3%	5.5%	9.2%
$50-75,000	89.0%	3.2%	7.8%
$75,000 or more	91.3%	1.5%	7.2%
COMPENSATION TYPE			
Salaried	89.3%	3.7%	7.0%
Hourly	80.3%	7.0%	12.7%
Other	86.0%	3.8%	10.2%
UNION STATUS			
Union	87.6%	2.5%	9.9%
Non-union	83.5%	6.2%	10.3%
LEAVE PAID			
Fully Paid	94.2%	2.0%	3.8%
Partially Paid	73.8%	6.3%	19.9%
Unpaid	76.5%	10.3%	13.1%

SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN. SURVEY OF EMPLOYEES, 1995.

Note: Percentages do not sum to 100% because respondents could choose more than one category. Because missing data are excluded, totals in subgroups do not always equal the total number of respondents.

TABLE 6.A

Ease of Performing FMLA Administrative Activities: The Impact of FMLA on Covered Worksites by Size

NUMBER OF EMPLOYEES

EASE OF PERFORMING FMLA ADMINISTRATIVE ACTIVITIES	All	Small Worksites*			Medium Worksites		Large Worksites		
		0-10	11-25	26-49	50-99	100-250	251-500	501-999	1000+
ALL RESPONDENTS n=	687,812	195,575	153,115	58,210	157,386	87,715	21,126	8925	5761
DETERMINE WORKSITESITE COVERAGE									
Very/Somewhat Easy	91.8%	85.0%	98.1%	93.1%	93.4%	90.9%	97.6%	90.1%	90.9%
Very/Somewhat Difficult	8.2%	15.0%	1.2%	6.9%	6.6%	9.1%	2.4%	9.1%	9.1%
DETERMINE EMPLOYEE ELIGIBILITY									
Very/Somewhat Easy	92.0%	98.9%	92.8%	98.0%	89.7%	79.4%	83.1%	82.7%	68.4%
Very/Somewhat Difficult	8.0%	1.1%	7.2%	2.0%	10.3%	20.6%	16.9%	17.3%	31.6%
MAINTAIN ADDITIONAL RECORDS									
Very/Somewhat Easy	76.0%	86.2%	72.4%	63.1%	82.8%	66.2%	56.3%	25.8%	25.9%
Very/Somewhat Difficult	24.0%	13.8%	27.6%	36.9%	17.2%	33.8%	43.7%	74.0%	74.1%
COORDINATE STATE AND FEDERAL LEAVE LAWS									
Very/Somewhat Easy	81.1%	72.9%	85.8%	78.5%	89.7%	80.6%	80.1%	71.3%	68.6%
Very/Somewhat Difficult	18.9%	27.1%	14.2%	21.5%	10.3%	19.4%	19.9%	28.7%	31.4%
COORDINATE WITH OTHER FEDERAL LAWS									
Very/Somewhat Easy	74.3%	69.5%	76.1%	73.3%	87.1%	67.2%	63.1%	50.4%	46.1%
Very/Somewhat Difficult	25.7%	30.5%	23.9%	26.7%	12.9%	32.8%	36.9%	49.6%	53.9%
COORDINATE WITH PRE-EXISTING LEAVE POLICIES									
Very/Somewhat Easy	78.9%	73.7%	91.2%	82.5%	76.1%	77.3%	75.5%	79.4%	57.2%
Very/Somewhat Difficult	21.1%	26.3%	8.8%	17.5%	23.9%	22.7%	24.5%	20.6%	42.8%
MANAGE INTERMITTENT USE OF LEAVE									
Very/Somewhat Easy	60.8%	68.5%	74.1%	37.9%	51.2%	59.9%	49.1%	44.1%	22.9%
Very/Somewhat Difficult	39.2%	31.5%	25.9%	62.1%	48.8%	40.1%	50.9%	55.9%	77.1%

SOURCE: AGUIRRE INTERNATIONAL TABULATIONS OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995

* Worksites of fewer than 50 employees are covered under FMLA if the worksite has at least 50 employees within a 75-mile radius.

TABLE 6.B

Leave-Takers: Continuous vs. Intermittent Leave

	n	%
Employees Taking Leave	20,439,974	100.0%
Continuous Leave	17,247,838	84.4%
Intermittent Leave	2,358,099	11.5%
Unknown	834,037	4.1%

SOURCE AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN SURVEY OF EMPLOYEES, 1995

TABLE 6.C

Cost to Employers: The Impact of FMLA on Covered Worksites by Size

(PERCENTAGE OF WORKSITES)

NUMBER OF EMPLOYEES

EXTENT OF COST			Small Worksites*			Medium Worksites		Large Worksites		
		All	0-10	11-25	26-49	50-99	100-250	251-500	501-999	1000+
ALL RESPONDENTS	n=	687,812	195,575	153,115	58,210	157,386	87,715	21,126	8925	5761
ADMINISTRATIVE COSTS										
No/Small Increase		89.2%	100.0%	90.7%	74.6%	88.8%	80.6%	74.4%	71.5%	58.3%
Moderate/Large Increase		10.8%	0.0%	9.4%	25.4%	11.2%	19.4%	25.6%	28.5%	41.7%
BENEFITS COSTS										
No/Small Increase		93.3%	98.4%	99.8%	88.8%	90.9%	82.4%	82.3%	86.9%	71.0%
Moderate/Large Increase		6.7%	1.6%	0.2%	11.2%	9.1%	17.7%	17.7%	13.1%	28.9%
HIRING/TRAINING COSTS										
No/Small Increase		94.8%	100.0%	100.0%	83.2%	95.1%	83.4%	88.6%	88.3%	85.9%
Moderate/Large Increase		5.2%	0.0%	0.0%	16.8%	4.9%	16.6%	11.4%	11.7%	14.2%
OTHER COSTS										
No/Small Increase		98.5%	99.4%	100.0%	95.1%	98.7%	97.0%	97.7%	91.8%	95.7%
Moderate/Large Increase		1.5%	0.6%	0.0%	4.9%	1.3%	3.0%	2.3%	8.2%	4.3%

SOURCE: AGUIRRE INTERNATIONAL TABULATIONS OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995

*Worksites of fewer than 50 employees are covered under FMLA if the worksite has at least 50 employees within a 75-mile radius.

TABLE 6.D

Cost Savings: The Impact of FMLA on Covered Worksites by Size

(PERCENT OF WORKSITES)

		NUMBER OF EMPLOYEES								
COST SAVINGS			Small Worksites*			Medium Worksites		Large Worksites		
		All	0-10	11-25	26-49	50-99	100-250	251-500	501-999	1000+
ALL RESPONDENTS	n =	687,812	195,575	153,115	58,210	157,386	87,715	21,126	8925	5761
All		100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Any Savings		2.5%	1.6%	0.0%	0.0%	4.9%	4.0%	11.0%	1.3%	3.8%
No Savings		97.5%	98.4%	100.0%	100.0%	95.1%	96.0%	89.0%	98.7%	96.2%

SOURCE: AGUIRRE INTERNATIONAL TABULATIONS OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

* Worksites of fewer than 50 employees are covered under FMLA if the worksite has at least 50 employees within a 75-mile radius.

TABLE 6.E

Business and Employee Performance: Effects of FMLA on Covered Worksites by Standard Industrial Classification

		Manufacturing	Retail	Services	All Other Industries	Total
BUSINESS PERFORMANCE	**BUSINESS PRODUCTIVITY**					
	Positive Effect	8.0%	1.7%	16.8%	1.0%	6.4%
	Negative Effect	11.3%	6.7%	9.9%	4.3%	7.3%
	No Noticeable Effect	80.7%	91.7%	73.3%	94.7%	86.4%
	BUSINESS PROFITABILITY					
	Positive Effect	0.9%	0.3%	1.6%	1.7%	1.2%
	Negative Effect	13.5%	3.6%	8.6%	4.2%	6.3%
	No Noticeable Effect	85.5%	96.1%	89.8%	94.1%	92.5%
	BUSINESS GROWTH					
	Positive Effect	1.8%	0.4%	1.3%	1.3%	1.1%
	Negative Effect	6.2%	0.6%	3.6%	3.7%	3.1%
	No Noticeable Effect	92.0%	98.9%	95.1%	95.0%	95.8%
EMPLOYEE PERFORMANCE	**EMPLOYEE PRODUCTIVITY (1)**					
	Positive Effect	11.0%	12.5%	25.8%	2.3%	12.6%
	Negative Effect	12.4%	5.4%	4.1%	2.4%	4.7%
	No Noticeable Effect	76.6%	82.1%	70.0%	95.4%	82.7%
	EMPLOYEE ABSENCES					
	Positive Effect	2.1%	4.6%	13.6%	1.6%	5.9%
	Negative Effect	12.2%	3.4%	4.9%	3.1%	4.6%
	No Noticeable Effect	85.8%	92.1%	81.5%	95.2%	89.5%
	EMPLOYEE TURNOVER (1)					
	Positive Effect	3.2%	2.6%	11.7%	1.4%	4.9%
	Negative Effect	2.3%	0.4%	0.3%	0.0%	0.4%
	No Noticeable Effect	94.6%	97.0%	88.0%	98.6%	94.7%
	EMPLOYEES' ABILITY TO CARE FOR FAMILY MEMBERS					
	Positive Effect	46.1%	30.1%	42.0%	26.3%	34.1%
	Negative Effect	0.0%	0.0%	0.1%	0.4%	0.2%
	No Noticeable Effect	53.9%	69.9%	57.9%	73.4%	65.7%
	EMPLOYEE CAREER ADVANCEMENT					
	Positive Effect	0.8%	22.1%	4.7%	2.9%	8.3%
	Negative Effect	3.7%	0.0%	0.1%	1.0%	0.8%
	No Noticeable Effect	95.5%	77.9%	95.2%	96.1%	91.0%

SOURCE AGUIRRE INTERNATIONAL TABULATIONS OF DATA FROM WESTAT INC., SURVEY OF EMPLOYEES, 1995

(1) Difference between the industries of FMLA-covered worksites is significant at p<.10.

TABLE 6.F

Business and Employee Performance: Effects of FMLA on Covered Worksites by Size

		NUMBER OF EMPLOYEES								
			Small Worksites*			Medium Worksites		Large Worksites		
		All	0-10	11-25	26-49	50-99	100-250	251-500	501-999	1000+
	ALL RESPONDENTS n=	687,812	195,575	153,115	58,210	157,386	87,715	21,126	8925	5761
BUSINESS PERFORMANCE	**BUSINESS PRODUCTIVITY**									
	Positive Effect	6.4%	2.3%	0.0%	0.0%	19.9%	7.7%	7.5%	3.3%	5.3%
	Negative Effect	7.3%	0.0%	2.6%	26.2%	4.9%	19.1%	15.4%	18.3%	27.6%
	No Noticeable Effect	86.4%	97.7%	97.4%	73.8%	75.3%	73.3%	77.1%	78.4%	67.1%
	BUSINESS PROFITABILITY									
	Positive Effect	1.2%	0.0%	0.0%	4.9%	1.7%	1.9%	3.3%	3.6%	3.1%
	Negative Effect	6.3%	0.6%	1.9%	20.9%	7.8%	11.9%	14.5%	5.7%	21.5%
	No Noticeable Effect	92.5%	99.4%	98.1%	74.2%	90.8%	86.2%	82.1%	90.7%	75.4%
	BUSINESS GROWTH									
	Positive Effect	1.1%	0.0%	0.0%	4.9%	0.7%	3.9%	1.8%	0.0%	3.0%
	Negative Effect	3.1%	0.0%	4.0%	10.6%	2.6%	3.6%	5.1%	3.1%	2.1%
	No Noticeable Effect	95.8%	100.0%	96.0%	84.4%	96.7%	92.5%	93.0%	96.9%	94.9%
EMPLOYEE PERFORMANCE	**EMPLOYEE PRODUCTIVITY**									
	Positive Effect	12.6%	2.1%	15.2%	9.2%	24.7%	12.5%	12.9%	13.3%	11.9%
	Negative Effect	4.7%	0.6%	1.9%	7.3%	4.9%	11.3%	15.2%	28.6%	17.4%
	No Noticeable Effect	82.7%	97.3%	83.0%	83.5%	70.3%	76.2%	71.9%	58.1%	70.8%
	EMPLOYEE ABSENCES									
	Positive Effect	5.9%	1.6%	11.9%	5.4%	6.5%	4.2%	5.0%	9.5%	6.4%
	Negative Effect	4.6%	0.6%	0.0%	5.3%	5.8%	13.2%	17.8%	18.4%	37.0%
	No Noticeable Effect	89.5%	97.9%	88.1%	89.3%	87.7%	82.6%	77.2%	72.2%	56.6%
	EMPLOYEE TURNOVER									
	Positive Effect	4.9%	1.6%	10.0%	0.1%	6.3%	3.5%	4.7%	8.2%	5.7%
	Negative Effect	0.4%	0.0%	0.0%	0.0%	1.3%	0.4%	1.9%	1.7%	0.8%
	No Noticeable Effect	94.7%	98.4%	90.0%	99.9%	92.4%	96.0%	93.4%	90.1%	93.6%
	EMPLOYEE'S ABILITY TO CARE FOR FAMILY MEMBERS									
	Positive Effect	34.1%	11.5%	34.0%	31.9%	43.9%	49.4%	55.5%	67.9%	70.9%
	Negative Effect	0.2%	0.0%	0.0%	0.0%	0.5%	0.0%	1.0%	0.0%	0.9%
	No Noticeable Effect	65.7%	88.6%	66.0%	68.2%	55.6%	50.6%	43.4%	32.1%	28.2%
	EMPLOYEE CAREER ADVANCEMENT									
	Positive Effect	8.3%	3.4%	25.2%	0.0%	4.7%	2.9%	3.5%	2.5%	7.5%
	Negative Effect	0.8%	0.0%	0.0%	0.0%	3.1%	0.0%	1.0%	0.0%	2.1%
	No Noticeable Effect	91.0%	96.6%	74.8%	100.0%	92.2%	97.2%	95.4%	97.5%	90.4%

SOURCE: AGUIRRE INTERNATIONAL TABULATIONS OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

* Worksites of fewer than 50 employees are covered under FMLA if the worksite has at least 50 employees within a 75-mile radius.

TABLE 6.G

Ease of Performing FMLA Administrative Activities, by Type of Covered Worksite

	All Covered Employers	Voluntary[1] Employers	Complying[2] Employers
ALL RESPONDENTS n=	609,365	206,193	403,173
DETERMINE WORKSITE COVERAGE			
Very/Somewhat Easy	91.8%	96.3%	89.1%
Very/Somewhat Difficult	8.2%	3.7%	10.9%
DETERMINE EMPLOYEE ELIGIBILITY			
Very/Somewhat Easy	92.0%	93.6%	91.1%
Very/Somewhat Difficult	8.0%	6.5%	8.9%
MAINTAIN ADDITIONAL RECORDS			
Very/Somewhat Easy	76.0%	83.3%	72.3%
Very/Somewhat Difficult	24.0%	16.7%	27.7%
COORDINATE STATE AND FEDERAL LEAVE LAWS			
Very/Somewhat Easy	81.1%	88.8%	77.5%
Very/Somewhat Difficult	18.9%	11.3%	22.5%
COORDINATE WITH OTHER FEDERAL LAWS			
Very/Somewhat Easy	74.3%	89.7%	66.2%
Very/Somewhat Difficult	25.7%	10.3%	33.8%
COORDINATE WITH PRE-EXISTING LEAVE POLICIES			
Very/Somewhat Easy	78.9%	83.0%	76.7%
Very/Somewhat Difficult	21.1%	17.0%	23.3%
MANAGE INTERMITTENT USE OF LEAVE			
Very/Somewhat Easy	60.8%	76.7%	52.7%
Very/Somewhat Difficult	39.2%	23.3%	47.3%

SOURCE: AGUIRRE INTERNATIONAL TABULATIONS OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

Note: Because missing data are excluded, totals in subgroups do not always equal the total number of respondents.

[1] Voluntaryemployers are those who had a family and medical leave policy comparable to or more generous than FMLA before 1993.

[2] Complying employers are those who had to initiate or expand an existing family and medical leave policy after enactment of the FMLA.

TABLE 6.H

Effects of Complying With FMLA on Business and Employee Performance by Type of Covered Employee

		All Covered Worksites	Voluntary Worksites	Complying Worksites
	ALL RESPONDENTS n=	687,812	255,642	432,170
BUSINESS PERFORMANCE	**BUSINESS PRODUCTIVITY**			
	Positive Effect	6.6%	13.3%	3.2%
	Negative Effect	7.2%	2.5%	9.6%
	No Noticeable Effect	86.2%	84.2%	87.2%
	BUSINESS PROFITABILITY			
	Positive Effect	0.8%	1.6%	0.4%
	Negative Effect	6.6%	2.3%	8.7%
	No Noticeable Effect	92.7%	96.1%	91.0%
	BUSINESS GROWTH			
	Positive Effect	0.7%	1.0%	0.5%
	Negative Effect	3.2%	0.6%	4.5%
	No Noticeable Effect	96.1%	98.3%	94.9%
EMPLOYEE PERFORMANCE	**EMPLOYEE PRODUCTIVITY**			
	Positive Effect	12.6%	24.8%	6.4%
	Negative Effect	4.7%	2.9%	5.6%
	No Noticeable Effect	82.7%	72.2%	88.0%
	EMPLOYEE ABSENCES			
	Positive Effect	5.7%	6.3%	5.4%
	Negative Effect	4.7%	2.6%	5.8%
	No Noticeable Effect	89.6%	91.1%	88.9%
	EMPLOYEE TURNOVER			
	Positive Effect	4.6%	4.4%	4.7%
	Negative Effect	0.4%	1.0%	0.1%
	No Noticeable Effect	95.2%	94.6%	95.2%
	EMPLOYEE ABILITY TO CARE FOR FAMILY MEMBER			
	Positive Effect	34.4%	42.9%	29.9%
	Negative Effect	0.2%	0.1%	0.2%
	No Noticeable Effect	65.4%	57.0%	69.9%
	EMPLOYEE CAREER ADVANCEMENT			
	Positive Effect	8.6%	22.3%	1.7%
	Negative Effect	0.8%	0.1%	1.1%
	No Noticeable Effect	90.7%	77.6%	97.2%

SOURCE: AGUIRRE INTERNATIONAL TABULATIONS OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

TABLE 6.1

Ease of Performing FMLA Administrative Activities by Leave-Taker Status

(PERCENTAGE OF COVERED WORKSITES)

	Has Had Leave-Takers	Has Not Had Leave-Takers	Total for All Employers
DETERMINE WORKSITE COVERAGE			
Very Easy	59.1%	63.0%	61.7%
Somewhat Easy	34.3%	27.4%	29.7%
Somewhat Difficult	3.5%	9.4%	7.4%
Very Difficult	3.2%	0.2%	1.2%
DETERMINE EMPLOYEE ELIGIBILITY			
Very Easy	59.0%	38.3%	45.4%
Somewhat Easy	28.1%	57.5%	47.5%
Somewhat Difficult	11.1%	3.8%	6.3%
Very Difficult	1.8%	0.3%	0.8%
MAINTAIN ADDITIONAL RECORDS			
Very Easy	23.3%	44.0%	36.6%
Somewhat Easy	40.2%	41.4%	41.0%
Somewhat Difficult	29.6%	11.3%	17.8%
Very Difficult	6.9%	3.3%	4.6%
COORDINATE STATE AND FEDERAL LEAVE LAWS			
Very Easy	41.4%	45.1%	43.8%
Somewhat Easy	43.1%	35.2%	38.0%
Somewhat Difficult	9.9%	18.7%	15.5%
Very Difficult	5.6%	1.0%	2.6%
COORDINATE WITH OTHER FEDERAL LAWS			
Very Easy	33.0%	38.6%	36.6%
Somewhat Easy	33.4%	41.4%	38.8%
Somewhat Difficult	27.4%	16.0%	20.1%
Very Difficult	5.2%	4.1%	4.5%
COORDINATE WITH PRE-EXISTING LEAVE POLICIES			
Very Easy	42.7%	46.1%	44.9%
Somewhat Easy	38.4%	31.7%	34.1%
Somewhat Difficult	15.4%	21.0%	19.0%
Very Difficult	3.5%	1.3%	2.1%
MANAGE INTERMITTENT USE OF LEAVE			
Very Easy	27.4%	38.4%	34.4%
Somewhat Easy	24.1%	31.1%	28.6%
Somewhat Difficult	35.9%	19.5%	25.5%
Very Difficult	12.6%	11.0%	11.6%

SOURCE: AGUIRRE INTERNATIONAL TABULATIONS OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995

TABLE 6.J

Cost to Covered Worksites by Leave-Taker Status

EXTENT OF COST	Has Had Leave-Takers	Has Not Had Leave-Takers	Total for All Worksites
ADMINISTRATIVE COSTS			
None	42.6%	57.3%	52.2%
Small	39.7%	36.4%	37.5%
Moderate	14.3%	6.3%	9.0%
Large	3.4%	0.1%	1.3%
BENEFIT COSTS			
None	56.2%	70.5%	65.7%
Small	29.3%	27.3%	28.0%
Moderate	10.5%	2.0%	4.9%
Large	3.9%	0.2%	1.5%
HIRING COSTS			
None	67.0%	83.2%	77.7%
Small	25.5%	13.7%	17.7%
Moderate	6.1%	2.3%	3.6%
Large	1.3%	0.7%	0.9%

SOURCE AGUIRRE INTERNATIONAL TABULATIONS OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995

TABLE 6.K

Business and Employee Performance: Effects of FMLA on Covered Worksites by Leave-Taker Status

(PERCENTAGE OF COVERED WORKSITES)

		Has Had Leave-Takers	Has Not Had Leave-Takers	Total for All Worksites
BUSINESS PERFORMANCE	**BUSINESS PRODUCTIVITY**			
	Positive	10.2%	5.1%	6.8%
	Negative	9.0%	5.4%	6.6%
	No Noticeable Effect	80.8%	89.6%	86.6%
	BUSINESS PROFITABILITY			
	Positive	2.5%	0.7%	1.3%
	Negative	9.5%	4.3%	6.0%
	No Noticeable Effect	88.0%	95.1%	92.7%
	BUSINESS GROWTH			
	Positive	2.2%	0.7%	1.2%
	Negative	5.5%	1.7%	2.3%
	No Noticeable Effect	92.3%	97.7%	95.9%
EMPLOYEE PERFORMANCE	**EMPLOYEE PRODUCTIVITY**			
	Positive	21.1%	9.2%	13.2%
	Negative	7.6%	2.0%	3.9%
	No Noticeable Effect	71.3%	88.8%	82.9%
	EMPLOYEE ABSENCES			
	Positive	14.1%	2.3%	6.3%
	Negative	8.3%	1.8%	3.9%
	No Noticeable Effect	77.6%	95.9%	89.8%
	EMPLOYEE TURNOVER			
	Positive	13.9%	0.7%	5.2%
	Negative	1.2%	0.1%	0.5%
	No Noticeable Effect	84.8%	99.2%	94.4%
	EMPLOYEE ABILITY TO CARE FOR FAMILY			
	Positive	57.4%	22.9%	34.9%
	Negative	0.0%	0.1%	0.0%
	No Noticeable Effect	42.6%	77.0%	65.1%
	EMPLOYEE CAREER ADVANCEMENT			
	Positive	10.3%	8.0%	8.8%
	Negative	1.9%	0.1%	0.7%
	No Noticeable Effect	87.8%	91.9%	90.5%

SOURCE: AGUIRRE INTERNATIONAL TABULATIONS OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

TABLE 6.L

Comparison of Costs Experienced by FMLA-Covered Worksites with Costs Anticipated by Non-Covered Worksites

COSTS	FMLA-Covered	Non-Covered
ADMINISTRATIVE COSTS		
No Increase	52.8%	35.2%
Small Increase	36.4%	22.4%
Moderate Increase	9.4%	25.5%
Large Increase	1.4%	16.9%
HIRING/TRAINING COSTS		
No Increase	76.3%	43.2%
Small Increase	18.5%	20.8%
Moderate Increase	4.2%	17.8%
Large Increase	1.0%	18.2%
OTHER COSTS		
No Increase	97.8%	92.7%
Small Increase	0.7%	1.4%
Moderate Increase	1.2%	4.1%
Large Increase	0.3%	1.7%

SOURCE: WESTAT, INC. TABULTION OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995

TABLE 7.A

Covered Versus Non-Covered Worksites: Leave-Taking Employees' Ease/Difficulty of Arranging Leave

	All Respondents	Covered	Non-Covered
Very Easy	64.8%	66.8%	59.5%
Somewhat Easy	16.3%	15.3%	19.3%
Neither Easy Nor Difficult	6.7%	6.8%	6.4%
Somewhat Difficult	6.7%	5.8%	9.1%
Very Difficult	5.4%	5.3%	5.8%
Total	100.0%	100.0%	100.0%

SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995

TABLE 7.B

Leave-Takers' Ease/Difficulty of Getting Leave, by Demographic Characteristics

		Very Easy	Somewhat Easy	Neither Easy nor Difficult	Somewhat Difficult	Very Difficult
ALL RESPONDENTS	n =	12,490,000	3,144,178	1,293,311	1,291,098	1,045,081
		64.8%	16.3%	6.7%	6.7%	5.4%
GENDER						
Male		72.3%	13.9%	5.8%	4.8%	3.2%
Female		59.5%	18.1%	7.3%	8.0%	7.1%
AGE						
18-24		65.4%	16.1%	7.6%	7.1%	3.8%
25-34		58.6%	19.4%	8.0%	6.9%	7.1%
35-49		64.1%	16.4%	6.2%	7.7%	5.7%
50-64		77.0%	11.7%	4.3%	3.5%	3.5%
65 or over		77.8%	7.4%	9.3%	5.6%	0.0%
RACE						
Latino		57.6%	21.5%	8.9%	5.1%	7.0%
African American		51.3%	23.1%	8.0%	6.0%	11.6%
Non-Latino White		69.0%	14.4%	6.3%	5.9%	4.3%
Other		48.6%	22.9%	8.6%	11.4%	8.6%
EDUCATION						
Less than High School		75.3%	11.3%	5.2%	3.6%	4.6%
High School Graduate		58.7%	19.8%	6.5%	9.9%	5.1%
Some College		63.7%	15.1%	7.9%	7.4%	5.9%
4 Years of College or more		67.5%	16.3%	6.3%	4.6%	5.4%
ANNUAL FAMILY INCOME						
Less than $20,000		58.1%	17.1%	9.0%	9.0%	6.9%
$20-30,000		62.8%	17.4%	6.0%	8.7%	5.0%
$30-50,000		67.8%	14.7%	9.2%	3.4%	5.1%
$50-75,000		67.1%	18.4%	3.9%	7.0%	3.5%
$75,000 or more		68.3%	9.5%	9.0%	3.7%	9.5%
COMPENSATION TYPE						
Salaried		68.7%	17.2%	5.7%	4.8%	3.6%
Hourly		62.1%	16.9%	7.0%	7.0%	6.8%
Other		65.5%	9.5%	8.9%	12.5%	3.6%
UNION STATUS						
Union		66.0%	18.8%	7.0%	4.4%	3.8%
Non-union		64.5%	15.9%	6.7%	7.2%	5.8%

SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995

Note: Because missing data are excluded, totals in subgroups do not always equal the total number of respondents.

TABLE 7.C

Leave-Taking Employees' Worries About Taking Leave, by Demographic Characteristics

		Might Lose Job		Might Hurt Job Advancement		Might Lose Seniority	
		YES	NO	YES	NO	YES	NO
ALL RESPONDENTS	n =	4,257,224 22.0%	15,050,000 78.0%	4,225,971 21.9%	15,110,000 78.1%	2,459,485 12.7%	16,840,000 87.3%
GENDER							
Male		16.1%	83.9%	17.5%	82.5%	10.7%	89.3%
Female		26.3%	73.7%	24.9%	75.1%	14.3%	85.7%
AGE							
18-24		28.0%	72.0%	27.4%	72.6%	14.2%	85.8%
25-34		25.6%	74.4%	23.7%	76.3%	17.4%	82.6%
35-49		23.1%	76.9%	24.5%	75.5%	13.0%	87.0%
50-64		10.6%	89.4%	10.2%	89.8%	4.2%	95.8%
65 or over		5.5%	94.5%	5.5%	94.5%	0.0%	100.0%
RACE							
Latino		36.5%	63.5%	33.3%	66.7%	23.9%	76.1%
African American		39.5%	60.5%	28.4%	71.6%	17.4%	82.6%
Non-Latino White		18.4%	81.6%	19.4%	80.6%	10.4%	89.6%
Other		25.0%	75.0%	32.4%	67.6%	25.0%	75.0%
MARITAL STATUS							
Married/Living w/Partner		19.1%	80.9%	19.8%	80.2%	11.3%	88.7%
Separated/Divorced/Widowed		22.4%	77.6%	22.7%	77.3%	14.9%	85.1%
Never been Married		37.4%	62.6%	30.9%	69.1%	17.7%	82.3%
EDUCATION							
Less than High School		28.0%	72.0%	28.9%	71.1%	25.3%	74.7%
High School Graduate		26.2%	73.8%	21.2%	78.8%	14.6%	85.4%
Some College		25.5%	74.5%	26.5%	73.5%	11.9%	88.1%
4 Years of College or more		13.9%	86.1%	16.0%	84.0%	8.4%	91.6%
ANNUAL FAMILY INCOME							
Less than $20,000		35.3%	64.7%	35.0%	65.0%	25.1%	74.9%
$20-30,000		25.8%	74.2%	39.7%	60.3%	15.2%	84.8%
$30-50,000		17.9%	82.1%	18.9%	81.1%	10.8%	89.2%
$50-75,000		13.2%	86.8%	15.5%	84.5%	5.3%	94.7%
$75,000 or more		18.1%	81.9%	16.9%	83.1%	9.0%	91.0%
COMPENSATION TYPE							
Salaried		11.6%	88.4%	17.9%	82.1%	9.1%	90.9%
Hourly		29.3%	70.7%	25.2%	74.8%	16.0%	84.0%
Other		21.1%	78.9%	17.5%	82.5%	7.6%	92.4%

SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995.

Note: Because missing data are excluded, totals in subgroups do not always equal the total number of respondents.

TABLE 7.D

FMLA-Covered Versus Non-Covered Leave-Takers' Worries About Taking Leave

	All Respondents	FMLA-Covered	Non-Covered
Might Lose Job	22.1%	21.8%	22.6%
Might Hurt Job Advancement	21.9%	23.0%	18.7%
Might Lose Seniority	12.8%	13.9%	9.7%
Total	100.0%	100.0%	100.0%

SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN. SURVEY OF EMPLOYEES, 1995.

TABLE 7.E

Leave-Taking Employees' Satisfaction With the Amount of Leave they Took, by Demographic Characteristics

	Very Satisfied	Somewhat Satisfied	Neither Satisfied Nor Dissatisfied	Somewhat Dissatisfied	Very Dissatisfied
ALL RESPONDENTS n=	9,265,796	5,406,857	1,250,754	2,287,250	1,083,524
	48.0%	28.0%	6.5%	11.9%	5.6%
GENDER					
Male	54.2%	22.8%	7.1%	11.7%	4.1%
Female	43.6%	31.7%	6.1%	11.9%	6.7%
AGE					
18-24	49.3%	28.9%	6.6%	7.6%	7.6%
25-34	44.5%	26.1%	7.8%	14.2%	7.4%
35-49	43.3%	30.7%	7.0%	14.1%	5.0%
50-64	63.6%	23.7%	3.2%	6.4%	3.2%
65 or over	64.8%	31.5%	1.9%	1.9%	0.0%
RACE					
Latino	47.5%	30.4%	3.8%	10.8%	7.6%
African American	35.8%	38.8%	5.0%	12.9%	7.5%
Non-Latino White	51.1%	26.2%	6.0%	11.8%	5.0%
Other	29.7%	45.9%	13.5%	8.1%	2.7%
EDUCATION					
Less than High School	46.9%	30.4%	6.2%	9.8%	6.7%
High School Graduate	44.4%	27.7%	6.3%	15.4%	6.3%
Some College	46.7%	30.1%	7.7%	9.3%	6.3%
4 Years of College or More	52.2%	26.2%	5.6%	12.1%	4.0%
ANNUAL FAMILY INCOME					
Less than $20,000	35.5%	36.1%	6.6%	10.1%	11.6%
$20-30,000	46.5%	26.1%	7.0%	16.7%	3.7%
$30-50,000	53.3%	25.4%	5.5%	10.8%	5.1%
$50-75,000	50.7%	31.1%	4.4%	11.1%	2.7%
$75,000 or more	52.1%	21.3%	6.4%	16.5%	3.7%
COMPENSATION TYPE					
Salaried	57.1%	25.4%	5.6%	8.1%	3.8%
Hourly	43.7%	29.8%	5.4%	14.5%	6.6%
Other	36.1%	27.8%	17.2%	11.2%	7.7%

SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN. SURVEY OF EMPLOYEES, 1995

Note: Because missing data are excluded, totals in subgroups do not always equal the total number of respondents.

TABLE 7.F

Covered Versus Non-Covered Leave-Taking Employees' Satisfaction With the Amount of Leave They Took

	All Respondents	Covered	Non-Covered
Very Satisfied	48.0%	50.5%	41.4%
Somewhat Satisfied	28.0%	27.4%	29.8%
Neither Satisfied nor Dissatisfied	6.5%	5.2%	10.0%
Somewhat Dissatisfied	11.9%	11.4%	13.2%
Very Dissatisfied	5.6%	5.6%	5.6%
Total	100.0%	100.0%	100.0%

SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995

TABLE 7.G

Leave-Takers: Pay Issues and Return to Work, by Type of Compensation

	Type of Compensation			
	All	Salaried	Hourly	Other
EXTENT OF PAID LEAVE[1]				
Fully Paid	46.7%	76.4%	32.6%	13.2%
Partially Paid	19.6%	13.1%	24.7%	15.5%
Unpaid	33.6%	10.5%	42.8%	71.4%
METHOD OF COVERING LOST WAGES[2]				
Earmarked Savings	43.7%	48.8%	44.4%	34.6%
Other Savings	40.6%	36.4%	43.7%	30.1%
Borrow Money	25.1%	20.9%	28.1%	15.5%
Public Assistance	9.0%	4.3%	10.4%	7.5%
Limit Extras	75.5%	70.7%	78.9%	64.3%
Put off Bills	38.8%	27.3%	41.9%	36.9%
Cut Leave Short	40.4%	27.1%	41.9%	47.7%
Other	12.8%	12.6%	13.2%	10.8%
RETURN TO WORK[1]				
Return to Same Employer	84.1%	89.3%	80.3%	86.0%
Did Not Return to Same Employer	5.5%	3.7%	7.0%	3.8%
Still on Leave	10.4%	7.0%	12.7%	10.2%

SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995

[1] These questions were asked of all leave-takers.

[2] This question was asked only of leave-takers who said they received partial pay or no pay while on leave. Respondents could choose more than one category.

Appendix F
Information on Survey Instruments

The survey instrument used to conduct the Employer Survey is reprinted in full in:

David Cantor, et al., *The Impact of the Family and Medical Leave Act: A Survey of Employers*. Rockville, MD.:Westat, Inc., October 1995.

The survey instrument used to conduct the Employee Survey is reprinted in full in:

Katherine A. McGonagle, et al. *Commission on Leave Survey of Employees on Impact of the Family and Medical Leave Act*. Institute for Social Research, Survey Research Center, The University of Michigan, October 1995.

Both of these reports are available upon request from:
The Women's Bureau, U.S. Department of Labor
200 Constitution Avenue, NW, Suite S-3002
Washington, DC 20210
Tel. 202 219-6611

The questions on family and medical leave policies and practices included in the Census Bureau's Characteristic of Business Owner's Survey are available on request from:

Office of Policy Analysis, Economics and Statistics Administration
U.S. Department of Commerce
14th and Constitution Avenue, NW Room 5854
Washington, DC 20230

Appendix G
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